

ADDENDUM No. 4

TO: ALL BIDDERS  
FROM: CITY OF HIALEAH  
RFP #: 2014-15-9500-00-002  
RE: RFP – SOLID WASTE COLLECTION SERVICES  
DATE: APRIL 23, 2015

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The original contract documents for the entitled: **REQUEST FOR PROPOSALS – SOLID WASTE COLLECTION SERVICES** needs to be amended as noted in this Addendum No. 4.

This Addendum No. 4 consists of 1 typed page, 3 attachments, and 1 addendum receipt form (ARF). The three attachments submitted as part of this Addendum are the lease and use agreements for the bays in the Fleet Maintenance Building, the vehicle washing facility and vehicle fueling facility as provided for in Section 25 of the Exclusive Franchise Agreement.

All of the terms and conditions in the original Contract Documents shall remain unchanged, except as stated in this Addendum No.4 and the three prior addenda. This Addendum No. 4 shall become a part of the Contract Documents.

Approved for issue:  Date: April 23, 2015  
Angel Ayala - Purchasing Director

ACKNOWLEDGMENT

Receipt of this Addendum No. 4 shall be acknowledged in the space provided on the ADDENDUM RECEIPT form – ARF (Copy attached) now a part of the Contract Documents to be faxed immediately to the City of Hialeah Purchasing Division (305) 883-5871 and submitted with sealed bids.

CHANGES IN THE CONTRACT DOCUMENTS:

- |                                                     |                                                      |
|-----------------------------------------------------|------------------------------------------------------|
| 1. Exhibit 10 to the Exclusive Franchise Agreement  | LEASE OF THREE BAYS AT FLEET MAINTENANCE BUILDING    |
| 2. Exhibit 11 to the Exclusive Franchise Agreement  | CONSENT AND USE AGREEMENT (Vehicle Washing Facility) |
| 3. Exhibit 14 to the Exclusive Franchise Agreement: | CONSENT AND USE AGREEMENT (Fueling facility)         |

CITY OF HIALEAH  
SOLID WASTE COLLECTION SERVICES

RFP - 2014-15-9500-00-002

ADDENDUM No. 4

CONTRACTOR'S NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE NO. \_\_\_\_\_

CONTACT NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_

THE BIDDER ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUM BY SIGNING AND DATING BELOW:  
(Copy of this form must be faxed immediately to the City of Hialeah at (305) 883-5871).

ADDENDUM

SIGNATURE

DATE

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ARF

**Attachment "A" to Addendum No. 4**

**City of Hialeah RFP No. 2014-15-9500-00-002**

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## LEASE OF THREE BAYS AT FLEET MAINTENANCE BUILDING

THIS LEASE (the "Lease") is made and entered into as of \_\_\_\_\_, 2015, between the CITY OF HIALEAH, a Florida municipal corporation ("Landlord"), and XYZ COMPANY, INC., a \_\_\_\_\_ corporation ("Tenant").

### WITNESSETH:

WHEREAS, the City owns the property and improvements located at 5601 East 8 Avenue, Hialeah, Florida (hereinafter referred to as the "Fleet Maintenance Building"); and

WHEREAS, on \_\_\_\_\_, 2015, the City Council of the City of Hialeah, passed and adopted Resolution No. \_\_\_\_\_, approving the award of an exclusive franchise for the collection of solid waste services pursuant to the terms and conditions set forth in the Exclusive Franchise Agreement to XYZ Company, Inc.; and

WHEREAS, the Exclusive Franchise Agreement provided the Contractor with an option to lease and use three bays in the Fleet Maintenance Building, more particularly described and depicted in Exhibit "A", for the repair and maintenance of the vehicles used by the Contractor to provide Residential Collection Service under the Exclusive Franchise Agreement, if the Contractor delivered timely written notice to the City that it wished to lease and use the three bays; and

WHEREAS, the Contractor timely delivered notice to the City exercising its option to lease and use the three bays for the repair and maintenance of the vehicles used by the Contractor to provide Residential Collection Service, subject to the terms of the Exclusive Franchise Agreement and this Agreement. The three bays are referred to herein as the "Premises" or "Bays".

NOW, THEREFORE, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant leases the Premises from Landlord, "AS IS" and "WHERE IS" without any representation or warranty whatsoever, including regarding the environmental condition of the Premises, by Landlord except as expressly set forth in this Lease for the Term, upon the terms and conditions of this Lease.

### 1. DEFINITIONS

The following definitions apply in this Lease.

"Applicable Law" means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Lease, and relate in any manner to the performance of the Landlord or Tenant under this Lease.

"Bankruptcy Action" means with respect to any Person (i) such Person filing a voluntary petition under Bankruptcy Law; (ii) the filing of an involuntary petition against such Person

under Bankruptcy Law in which such Person colludes with, or otherwise assists such Person, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (iii) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Law; (iv) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (v) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any action, suit or proceeding, its insolvency or inability to pay its debts as they become due; (vi) such Person generally does not pay their debts as and when they become due and owing or admits an inability to pay its debts as and when they become due and owing; (vii) if a meeting of such Person is convened for the purpose of considering any resolution for, or to petition for, winding-up or administration or if any resolution relating with respect thereto or with respect to any present, contemplated or future Bankruptcy Action, or if an order for winding-up or administration, custodianship, liquidation, winding-up, dissolution, or any other insolvency proceedings or Bankruptcy Action of such Person; or (viii) the taking of any action in furtherance of the foregoing.

"Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Bankruptcy Sale" means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.

"Bankruptcy Termination Option" means Tenant's or any Subtenants' right to treat this Lease or any Subtenant's Sublease, as applicable, as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of law.

"Building" means all Improvements located on the Premises from time to time.

"Building Equipment" means all fixtures incorporated in the Premises and used, useful, or necessary to operate the Building as such (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes) as opposed to operating any business in the Building.

"Bulky Yard Waste" means palm fronds, tree limbs, and other pieces of Yard Waste that are too big or heavy to fit in a Garbage Cart. However, Bulky Yard Waste does not include Land Clearing Debris.

"Business Day" means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel. All references in this Lease to time periods shall mean calendar days unless Business Days are specifically referenced. Whenever a date specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next Business Day.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Buildings, whether or not insured or insurable.

"Change in Law" means the adoption, promulgation, or modification of any Applicable Law after the Effective Date, which directly and substantially affects the Tenant's or Landlord's cost or ability to perform under this Lease. A Change in Law does not include a change in any tax law or worker's compensation law.

"Collection Service" means one or more of the various services provided by the Tenant for the Collection of Solid Waste pursuant to the Exclusive Franchise Agreement.

"Consumer Price Index" or "CPI" means the "Consumer Price Index - All Urban Consumers" all items, not seasonably adjusted, for the Miami-Ft. Lauderdale area, Base Period 1982-84 = 100 (Series ID CUURA0320SA0), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor agency.

"Default Interest" means interest at an annual rate equal to the lesser of: (a) thirteen percent (13%); or (b) the Usury Limit.

"Depository" means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an institutional lender, designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease.

"Effective Date" means the date when this Lease is signed and duly executed by the City or its designee, which shall occur after the Lease is signed and duly executed by the Tenant.

"Environmental Law" means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"Exclusive Franchise Agreement" means the Exclusive Franchise Agreement entered into by and between the City of Hialeah and XYZ Company, Inc., dated \_\_\_\_\_, 2015.

"Expiration Date" means the date when this Lease expires in accordance with its terms, or is terminated by Landlord's exercise of remedies for an Event of Default, or otherwise.

"Fee Estate" means Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

"Furniture, Fixtures and Equipment" or "FF&E" means all movable furniture, furnishings, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any electrical, plumbing, mechanical or other system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as factory equipment, furniture,

movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of building and zoning, city council, board of adjustment, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

"Hazardous Substance" includes any substance or related material that is defined as "hazardous" or "toxic" or a term of similar import or is regulated as such under any Environmental Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 V.S.C. § 1317), as amended; (ii) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 V.S.C. §6901, et seq., as amended; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 V.S.C. §9601 et seq. or any so-called "superfund" or "superlien" law; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; or (vi) defined as a "hazardous chemical" under 29 C. F.R. Part 1910.

"Hazardous Substances Discharge" means any deposit, discharge, generation, release, or spill of Hazardous Substances in violation of Environmental Laws that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease. Notwithstanding the foregoing, the term Hazardous Substances Discharge shall not include any permitted releases or any deposit, discharge, generation, release or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or any seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land to the extent caused by Landlord or Landlord's agent. A "permitted release" is a release, the nature and manner of which is authorized in a permit issued to Tenant, or its successors or assigns, by a governmental agency with jurisdiction over the Premises or which generally is authorized pursuant to Environmental Law.

"Indemnified Loss" means all actual costs, losses, damages, expenses, and liabilities that a Landlord Indemnified Party incurs or suffers pursuant to or in connection with any act, omission, or negligence on the part of the Tenant or any of its officers, directors, agents, employees, or subcontractors, in the execution or performance of its obligations under this Lease including but not limited to any (i) any negligent use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof; (ii) any failure on the part of Tenant to perform or comply with any of the covenants,

agreements, terms or conditions contained in this Lease. Such costs include, but are not limited to, attorneys' fees, court costs, and expert witnesses' fees, in all trial, appellate, mediation and bankruptcy proceedings. An Indemnified Loss includes, but is not limited to all actual costs, losses, damages, expenses, and liabilities arising or resulting from, or relating to (a) any bodily injury, sickness, disease, or death; (b) any violation of Applicable Law (including worker's compensation laws, environmental laws, and health and safety laws) or any common law duties; (c) any action or alleged infringement of any intellectual rights or any property of any person; (d) any pollution in violation of Applicable Law or damage or destruction to property, natural resources or the environment; (e) any lawsuit resulting from or challenging the designation by Tenant of any document or material as a exempt from public disclosure under the Florida Public Records laws or otherwise; (f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, or servant of Tenant in respect of the Premises; (g) any contest by Tenant permitted pursuant to Section 10; (h) defending, settling, prosecuting, investigating, or participating in (as a witness or otherwise) any proceeding that arises out of or pertains to any of the foregoing; in each case, without regard to or limitation by the amount or type of benefits, damages, or compensation payable by or for Tenant, any subcontractor, or any subcontractor of a subcontractor, under any Applicable Law (including employee benefits, disability benefits, and worker's compensation laws).

"Lease Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date (or starting on the Commencement Date, if the Commencement Date is the first day of a month); and (b) every subsequent period of twelve calendar months during the Term.

"Leasehold Estate" means Tenant's leasehold estate created under this Lease, and all of Tenant's rights and privileges, under this Lease, upon and subject to all the terms and conditions of this Lease.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, at trial, at all appeal levels, at all administrative proceedings or hearings, and in or as a result of any bankruptcy proceeding.

"Liability Insurance" means commercial general liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises, excluding publicly dedicated adjoining streets and passageways.

"Loss" means a casualty or condemnation affecting the Premises.

"Loss Proceeds" means any insurance proceeds or condemnation award paid or payable for a Loss.

"Monetary Default" means Tenant's failure to pay any Rent, Additional Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

"Nonmonetary Default" means Tenant's material: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b)



breach of any representation or warranty (as of the date made or deemed made).

"Person" means any and all persons, natural or artificial, including any individual, association, corporation, Government, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, however organized.

"Prohibited Lien" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant) or any other lien based on a claim against Tenant (or anyone claiming through Tenant) except for ad valorem real estate taxes which are automatically a lien as of January 1<sup>st</sup> of any calendar year.

"Property Insurance" means insurance providing coverage for the Premises and grinding equipment at the Premises for the production of mulch, against loss, damage, or destruction by fire and other hazards, as required by the terms of this Lease or the Exclusive Franchise Agreement.

"Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, or Depository.

"Real Estate Taxes" means all the following items imposed by any Government authority that are applicable to the Premises or the operation thereof: (a) all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), (b) municipal water, water meter and sewer rents, rates and charges, (c) excises, (d) levies, (e) license and permit fees, (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, (g) fines, penalties and other governmental charges and any interest or costs with respect thereto, and (f) any and all other levies, fees, rents, proffers, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises or the use and occupancy thereof by Tenant.

"Records" shall mean all business records maintained by the Tenant in its ordinary course of business of whatever kind or nature.

"Structure" of the Premises means only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of the Premises.

2. **RECITAL WHEREAS CLAUSES.** The Parties represent that the above Recital Whereas Clauses are true and correct and are hereby incorporated herein by reference in their entirety and made an integral part of this Lease.

3. **TERM** The Term of this Lease (the "Term") shall: (a) commence on the Commencement Date; and (b) continue until (1) the expiration of the Exclusive Franchise Agreement or its earlier termination by the City; (2) the expiration of the Equipment Yard Lease or its earlier termination by the City; or (3) the termination of this Lease by the Landlord. The Commencement Date shall be the day when the Tenant shall begin to provide Collection Services to the City pursuant to the Exclusive Franchise Agreement. The Commencement Date is August 1, 2015.

4. **RENT AND ADJUSTMENTS**

4.1. *Base Rent.* For the first year of the Lease, Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, an annual rental of \$60,000.00, payable monthly in equal installments of \$5,000.00 beginning on the Commencement Date and each and every month thereafter on or before the first day of each month. Tenant shall pay the Base Rent when due and payable, without any setoff, abatement, deduction, counterclaim or prior demand whatsoever. Any Base Rent or Additional Rent due for any partial month, year or other applicable period in the calendar year in which the Commencement Date or Expiration Date occurs shall be appropriately prorated.

4.2. *Rent Adjustments.* Beginning on the second Lease Year, and each anniversary thereafter, Base Rent shall be adjusted to reflect an increase of three percent (3%) of the annual Base Rent paid the preceding Lease Year or one hundred percent (100%) of any upward increase in the Consumer Price Index (CPI) during the most recent twelve (12) month period extending from April 1 to March 31, whichever amount represents a higher increase to the Base Rent. The percentage CPI change shall be calculated utilizing the same formula described in Section 38.3 of the Exclusive Franchise Agreement.

5. **ADDITIONAL RENT**

The following shall constitute Additional Rent due under this Lease, as applicable.

5.1 *Real Estate Taxes.* If Real Estate Taxes are ever assessed against the Premises, Tenant shall pay and discharge all such Real Estate Taxes payable or accruing during the term of this Lease (including any determined to be due and owing after a Contest of Real Estate Taxes), by that date on which the Real Estate Taxes are last payable without delinquency (by way of example, 2015 Real Estate Taxes are first billed on November 1, 2015 and payable without delinquency until March 31, 2016, so Tenant would have until March 31, 2016 to pay same), but in any event prior to the Expiration Date. If any such assessed taxes include other land of which the Premises are a part of, Tenant shall pay its proportionate share to be determined by the Landlord. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes. Notwithstanding the foregoing, Tenant shall not be in default for failure to pay Real Estate Taxes (including any determined to be due and owing after a Contest of Real Estate Taxes) until Tenant has received notice and the opportunity to cure that is afforded Tenant for Monetary Defaults under this Lease. If Tenant fails to pay such Real Estate Taxes after the notice, then this shall constitute an Event of Default and the Landlord may proceed with its remedies under Section 18 of the Lease, and Tenant waives all defenses, except defense of payment, in any action brought by Landlord to enforce its rights under this Section. Tenant shall promptly reimburse Landlord for any payments made and costs incurred under this Section, including Legal Costs. Tenant shall, within a reasonable time after payment, give Landlord reasonable proof that Tenant has paid any Real Estate Taxes that this Lease requires

Tenant to pay. Real Estate Taxes for the year in which the Expiration Date occurs shall be prorated as of midnight of the day preceding the Expiration Date, and such amount shall be paid within 10 Business Days after the Expiration Date by Tenant to Landlord. If the amount of taxes for such year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the tax bill for the Premises for the year of the Expiration Date; this provision will survive the termination of the Lease. Landlord shall at no cost to Landlord reasonably cooperate with Tenant to realize any available exemption from Real Estate Taxes, if any are assessed.

5.2. *Direct Payment by Landlord.* Additional Rent shall include obligations of Tenant owed to third parties by virtue of other provisions of this Lease. If any such Additional Rent is required by such third parties to be paid directly by Landlord, then Tenant shall notify Landlord and shall pay such amount to Landlord in a timely manner with reasonable instructions on remittance of such payment by Landlord to the payee. Landlord shall, with reasonable promptness, comply with Tenant's reasonable instructions, and Landlord shall pay (either to the third party directly or to Tenant within 30 days after Notice) any penalties, late fees, finance charges, lost discounts or other amounts payable to the obligee as a direct result of Landlord's failure to do so.

5.3. *Utilities.* Tenant shall also pay for the cost of all utilities, which shall include but shall not be limited to electricity, water and sewer ("Utility Costs"), which it utilizes at or relating to the Premises. Notwithstanding the foregoing, Tenant shall not be in default for failure to pay such utility costs until Tenant has received a Notice giving Tenant 5 days opportunity to pay such Utility Costs. If Tenant fails to pay such Utility Costs after the Notice, then this shall constitute an Event of Default and the Landlord may proceed with its remedies under Section 18 of the Lease, and Tenant waives all defenses, except defense of payment, in any action brought by Landlord to enforce its rights under this Section. Tenant shall promptly reimburse Landlord for any payments made and costs incurred under this Section, plus a \$500 administrative fee, interest at the Default Interest Rate and Legal Costs. Notwithstanding anything to the contrary, should any non-payment under this Section result in a lien on the Fee Estate, then Landlord shall have the remedies provided for Prohibited Liens. If any such Utility Costs are not separately metered to the Premises, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises. In the event of any interruption or malfunction for any reason of any utility or service to the Premises not separately metered, Landlord shall use reasonable diligence to restore the utility or service. However, any such interruption or malfunction, if restored within a reasonable time, shall not entitle Tenant to be relieved from any of its obligations under this Lease, or grant Tenant the right of set-off or recoupment of Rent, or entitle Tenant to any damages.

5.4. *Sales and Use Tax.* Tenant hereby covenants and agrees to pay monthly, as Additional Rent, any sales, use or other tax, excluding State and /or federal Income Tax, now or hereafter imposed upon rents by the United States of America, the State of Florida or any political subdivisions thereof, to the Landlord, notwithstanding the fact that such statute, ordinance or enactment imposing the same may endeavor to impose the tax on the Landlord. Landlord shall at no cost to Landlord reasonably cooperate with Tenant to realize any available exemption from sales, use or similar taxes thereon, if any.

5.5 *Late Charges.* Any and all late charges assessed to Tenant pursuant to section 17.4 of this Lease.

5.6 All of the amounts payable by Tenant to or for the benefit of Landlord pursuant to this Lease, including, without limitation, Base Rent and Additional Rent, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay or deposit, shall constitute rent under this Lease for the purpose of Tenant's failure to pay any amounts due under this Lease after the expiration of any applicable notice and cure periods, and Landlord (in addition to other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent.

5.7 Tenant shall reimburse Landlord upon demand for all additional costs and expenses, including, without limitation, Legal Costs paid or incurred by Landlord in connection with any Event of Default, or arising out of any indemnity or hold harmless agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the successful enforcement of its rights and Tenant's obligations under this Lease.

## **6. USE; MAINTENANCE AND REPAIRS; TENANT IMPROVEMENTS**

6.1. The Tenant may use only the Premises (and not any other bays or area in the Fleet Maintenance Building without the City's prior written consent) for the repair and maintenance of the vehicles that the Tenant uses to provide Collection Services under the Exclusive Franchise Agreement. The Tenant shall not perform any other activity that is likely to cause pollution of the soil or water on, under, or adjacent to the Bays or Fleet Maintenance Building. The Tenant shall not use the Bays for any other activity, unless the Tenant receives the Landlord's prior written approval for such activity. The Landlord shall have the right to establish and enforce reasonable rules and regulations ("Rules and Regulations") governing the use and occupancy of the Bays, as well as access and egress thereto. Tenant shall obey all such Rules and Regulations of which it has received reasonable notice and the failure to do so shall constitute a material Event of Default under this Lease.

6.2. Landlord shall (other than for any repairs or replacements required as a result of the acts or omissions or negligence of the Tenant, its agents and their employees or invitees) maintain in good condition only the Structure of the Premises, and the roads, parking areas, driveways and all exterior areas used in common by the City of the Fleet Maintenance Building, and generally keep them clean. Tenant shall otherwise be responsible for all repairs and maintenance of the Premises, at its sole cost and expense. Tenant shall notify Landlord and Landlord shall approve all repairs to the Premises in advance of their performance. All repairs must be at least equal in quality and class to the original work and shall be made in compliance with all Applicable Laws. Tenant shall also, at its own expense, keep the Premises clean and will remove all refuse and garbage therefrom. No Hazardous Substances shall be stored at the Premises. Garbage and refuse shall be stored at such locations and in such containers as shall be designated by Landlord. Tenant may not place or store any pallets outside the exterior of the Premises.

6.3 Tenant shall make no changes, improvements, alterations or additions to the Premises unless such changes, improvements, alterations or additions: (a) are first approved in writing by Landlord, which shall not be unreasonably withheld; and (b) will not materially alter the character of the Premises and will not substantially lessen the value of the Premises. All improvements, alterations, or additions made by Tenant to the Premises, which are so attached to the Premises that they cannot be removed without material injury to the Premises, shall become the property of Landlord upon installation.

## 7. PROHIBITED LIENS

7.1. *Tenant's Covenant.* If a Prohibited Lien is filed then Tenant shall, within 30 days after the (i) the filing of such lien, or (ii) Tenant's actual knowledge of the existence of such lien, whichever happens last, cause such Prohibited Lien to be paid, discharged, bonded, transferred to security or cleared from title. If Tenant fails to do so, Landlord may do so and Tenant shall reimburse Landlord for the reasonable costs of doing so, including Legal Costs incurred by Landlord plus an administrative charge of thirteen percent (13%) of the amount of the Prohibited Lien, and/or Landlord may give Notice of Default and pursue its remedies pursuant to the terms of this Lease. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Section shall be construed to: (a) limit Tenant's right of Contest so long as no Prohibited Lien is filed; or (b) obligate Tenant regarding any lien that results from any act or omission by Landlord (for which Landlord shall be provided Notice by Tenant) and, if Landlord does not within 30 days thereafter cause such lien to be paid, discharged, bonded, transferred to security or cleared from title, Tenant may do so and Landlord shall reimburse Tenant for the reasonable costs of doing so. If any Subtenant or other party claiming under Tenant causes a Prohibited Lien, then Tenant's obligations under this Subsection shall be suspended for a period not to exceed thirty (30) days so long as both: (a) Tenant is with reasonable diligence endeavoring to cause the Subtenant or other party to remove the Prohibited Lien, and is keeping Landlord informed in writing as to its efforts; and (b) the holder of the Prohibited Lien has not commenced foreclosure proceedings. If either of the foregoing conditions is not met, or if the thirty (30) day period expires, Tenant shall within ten (10) days of the failure of such condition cause such Prohibited Lien to be paid, discharged, bonded, transferred to security or cleared from title.

7.2. *Protection of Landlord.* NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR ANY SUBTENANT OR OTHER PARTY CLAIMING UNDER TENANT UPON CREDIT, AND THAT NO CONSTRUCTION OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE, INCLUDING WITHOUT LIMITATION JOINDER BY LANDLORD IN ANY APPLICATION OR APPROVAL, SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT OR ANY SUBTENANT OR ANY OTHER PARTY CLAIMING UNDER TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL

INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT OR ANY SUBTENANT, AND AGAINST ALL PROHIBITED LIENS. Pursuant to section 713.10(2)(b), Florida Statutes, Landlord and Tenant agree to execute a short form Memorandum of this Lease, in the form shown in the attached **Exhibit C** for purposes of recording such form in the public records.

## **8. HAZARDOUS SUBSTANCES; ENVIRONMENTAL COMPLIANCE AND REMEDIATION**

**8.1. Restrictions.** Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance in violation of Environmental Laws, or the transportation to or from the Premises of any Hazardous Substance in violation of Environmental Laws.

**8.2. Condition of Premises; Compliance; Clean-Up.** Tenant acknowledges that it is fully familiar with the physical and environmental condition of the Property and shall take the Premises in "AS IS" and "WHERE IS" condition without any representation or warranty whatsoever except as expressly set forth in this Lease. Tenant shall, at Tenant's sole expense: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and any required financial assurances for such Hazardous Substances Discharge; (d) promptly and diligently carry out all such clean-up plans; (e) conduct and complete the Remedial Action, and Indemnify Landlord for any non-performance of or delay in completion of the Remedial Action except to the extent such non-performance of or delay in completion of the Remedial Action is caused by the acts or omissions of Landlord or Landlord's agent; and (f) as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, Indemnify Landlord against any Hazardous Substances Discharge or violation of Environmental Law provided, however, in no event shall Tenant Indemnify Landlord for events, occurrences or matters (i) to the extent caused by the acts or omissions of Landlord or Landlord's agent, or (ii) which are in existence prior to the Commencement Date, except to the extent such events, occurrences or matters are exacerbated by Tenant (in which event Tenant shall only Indemnify Landlord with regards to such exacerbation). Without limiting the generality of the foregoing, Tenant shall comply with any conditions of any no further action determination as provided for and in conformance with Rule 62-780.680, Fla. Admin. Code. Neither Landlord nor Tenant shall modify the terms of any such no further action determination without the written consent of the other party. Any party's obligations under this Section 8 shall not limit such party's rights against third parties. Notwithstanding anything to the contrary in this Lease, as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, as between Landlord and Tenant (and those claiming through Tenant, including Subtenants), Landlord shall have no responsibility whatsoever regarding environmental matters and conditions on the Premises, except for matters arising or exacerbated (but only to the extent of such causation or exacerbation) as a result of the acts or omissions of Landlord or Landlord's agent. Tenant shall obtain and maintain a pollution liability policy in compliance with the requirements in Section 11, below, to insure against risks including (if available) an unknown pollution condition, third-party claims alleging that pollution has

migrated from the Premises and has caused bodily injury or damaged property off-Premises, allegations of bodily injury or property damage as a result of exposure to toxic substances on the Premises, and claims by Governments for natural resource damages, and Tenant shall continue to maintain the same throughout the Term solely to the extent similar coverage (in Tenant's reasonable discretion) is available with at least the same coverage at the same or less premium than for the initial policy. Both Landlord and Tenant shall be named insureds, though the policy will provide that only Tenant is responsible for premium payment.

8.3. Subject to the limits on liability set forth in Florida Statutes Section 768.28, as amended from time to time, Landlord shall indemnify the Tenant and hold the Tenant harmless from any damages that are incurred by the Tenant as a result of any pollution in violation of Applicable Law that exists on, under, or adjacent to the Fleet Maintenance Building prior to the Commencement Date. However, this indemnification does not extend to pollution in violation of Applicable Law or other environmental contamination or damages caused by the Tenant or its subcontractors on or after the Commencement Date. In the event of joint negligence on the part of the Landlord and the Tenant, all losses and costs shall be apportioned in accordance with the provision of the Exclusive Franchise Agreement.

8.4 *Records.* Tenant shall be solely responsible for keeping all of the records and documents necessary to demonstrate that Tenant has performed its duties in compliance with the requirements in this Lease. The Tenant's records concerning its performance under this Lease shall be kept in the Tenant's local office or in another location in Miami-Dade County for at least three (3) years following termination of this Lease. Tenant shall cooperate with Landlord and provide every reasonable opportunity for Landlord to ascertain whether the duties of the Tenant are being performed properly. Tenant shall promptly provide any information regarding performance of Tenant's obligations under this Lease.

## **9. DAMAGES AND INDEMNIFICATION**

9.1 *Liability.* Tenant shall not do, or knowingly permit any officer, director, employee, agent or contractor of Tenant or any other Person, to do any act or thing upon the Premises or elsewhere which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of any Applicable Law or any other law, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability.

The Tenant shall be liable for all injuries and conditions that are caused by or result from the Tenant's actions, including but not limited to the Tenant's failure to perform in accordance with the terms of this Lease. To the extent that the Landlord and Tenant are joint tortfeasors, losses shall be apportioned in the manner described in Section 9.3, below.

9.2 *Tenant's Indemnification Of Landlord.* To the greatest extent allowed by Applicable Law, the Tenant releases and shall indemnify, hold harmless, and, if requested by the Landlord, defend, each of the Landlord Indemnified Parties from and against every Indemnified Loss that is caused by or results from, directly or indirectly, in whole or in part, any act, omission, or negligence of the Tenant, any tier of subcontractor to the Tenant or any subcontractor to a subcontractor of the Tenant, or anyone employed by any of those Persons for

whose acts or omissions any of them may be liable, except to the extent resulting from the conduct of the Landlord Indemnified Party. The obligation of the Tenant under this Section 9.2 is absolute and unconditional; it is not conditioned in any way on any attempt by a Landlord Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Tenant might have against the Landlord Indemnified Party.

It is the intent of this Section 9.2 that the Tenant's indemnification obligations include all joint and several liability of the Tenant, any subcontractor to the Tenant, or any subcontractor to a subcontractor of the Tenant, and anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

The Landlord may employ any attorney of its choice or may use its in-house counsel to enforce or defend the Landlord's right to indemnity provided by this Agreement. If a Landlord Indemnified Party requests that the Landlord defend it with respect to any Indemnified Loss, the Landlord Indemnified Party may participate in the defense at its sole cost and expense. The Tenant shall advance or promptly reimburse to a Landlord Indemnified Party any and all costs and expenses incurred by the Landlord Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the Landlord Indemnified Party is entitled to indemnification under this Agreement, whether or not the Landlord Indemnified Party is a party or potential party to it.

**9.2.1 Notice and Defense Process.** If any claim, action or proceeding is made or brought against any of the Landlord Indemnified Parties by reason of any event for which Tenant has agreed to indemnify the Landlord Indemnified Parties, then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding (in such Landlord Indemnified Party's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld. The foregoing notwithstanding, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance carrier, Landlord may, following such consultation with Tenant as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding. The Tenant shall advance or promptly reimburse Landlord any and all costs and expenses incurred by the Landlord in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which any of the Landlord Indemnified Parties is entitled to indemnification under this Agreement, whether or not any of the Landlord Indemnified Parties is a party or potential party to it. Landlord shall consent to any proposed settlement, which such consent shall not be unreasonably withheld.

**9.3 Contribution.** In the event of joint negligence on the part of the Landlord and the Tenant, any loss and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the



Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date.

9.4 *Damages.* The measure of damages to be paid by the Tenant to the Landlord or by the Landlord to the Tenant, due to any failure by the Tenant or the Landlord to meet any of its obligations under this Agreement, shall be the actual damages incurred by the Landlord or the Tenant. Neither Party shall have any liability under this Agreement for consequential, delay, special, indirect, or punitive damages. The foregoing shall apply without regard to either Party's rights to the Performance Bond, insurance proceeds, or other factors.

If the Tenant fails to comply with any Applicable Law, the Tenant shall promptly pay to the Landlord the following:

(a) All lawful fines, penalties, and forfeitures charged to the Landlord by any judicial order or by any governmental agency responsible for the enforcement of the Applicable Law; and

(b) The actual costs incurred by the Landlord as a result of the Tenant's failure to comply with the Applicable Law, including any costs incurred in investigating and remedying the conditions which led to or resulted from the Tenant's failure to comply with the Applicable Law.

9.5 *No Personal Liability.* Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the Landlord or the Tenant.

9.6 *Collection of Overdue Payments And Interest.* If the Tenant fails to pay any Rent or other amount that is owed to the Landlord under this Agreement, the Tenant shall pay Interest on the outstanding debt and the Tenant shall pay any expenses the Landlord incurs in its efforts to recover the unpaid debt. Interest shall begin to accrue on the first calendar day after the payment is due and it shall compound daily. The Tenant's liability for expenses shall include but not be limited to any court costs, filing fees, witness fees, and attorneys' fees that the Landlord incurs in any civil or administrative proceeding, appeal, or settlement.

9.7 Nothing in this Section 9 shall apply to obligations concerning Hazardous Substances, Environmental Compliance and Remediation, which are covered in Section 8.

9.8 The provisions of this Section 9 shall survive the expiration or termination date of this Lease with respect to actions or the failure to take any actions or any other matter arising prior to the expiration or termination date of this Lease.

## 10. RIGHT OF CONTEST

10.1 *Tenant's Right; Contest Conditions.* Notwithstanding anything to the contrary in this Lease, Tenant shall have the exclusive right to contest, at its sole cost, by appropriate legal

proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord; or any other matter involving a Person other than Landlord that Tenant has agreed to comply with or be bound by under this Lease that is susceptible to Contest (any of the foregoing, a "Contest"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "Contest Conditions") to remain satisfied:

*10.1.1 No Criminal Act.* Such deferral or noncompliance shall not constitute a criminal act by Landlord and shall not subject Landlord to a material risk of any fine or penalty, except fines or penalties for which Tenant agrees to be liable.

*10.1.2 No Liability.* Excluding deferrals or noncompliance resulting from the Contest of Real Estate Taxes, such deferral or noncompliance creates no material (as reasonably determined by Landlord) risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Tenant has given Landlord reasonable security in an amount reasonably estimated to equal the amount of such lien, charge or other liability.

*10.1.3 No Forfeiture.* Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost, and no Prohibited Lien will be created by such Contest.

*10.1.4 No Cost to Landlord.* Such Contest shall be without cost, liability, or expense to Landlord.

*10.1.5 Diligence.* Tenant shall prosecute such Contest with reasonable diligence and in good faith.

*10.1.6 Payment.* If required for such Contest, Tenant shall have paid the Contested Real Estate Taxes or other matter.

*10.1.7 Collection of Real Estate Taxes.* If such Contest relates to any Real Estate Tax, Tenant shall Indemnify Landlord in respect of collection from Landlord and the Fee Estate of same.

*10.1.8 No Tax Deed.* If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed of the Fee Estate for nonpayment, then Tenant shall payor cause to be paid the sums in sufficient time to prevent delivery of such deed.

*10.1.9 Named Parties.* If Landlord has been named as a party in any action and desires to be removed, then, upon Landlord's written request, Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord's place, if permissible under the circumstances.

*10.1.10 No Event of Default.* No Event of Default shall exist at the time of commencement of the Contest.

*10.2. Landlord Obligations and Protections.* Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; (b) such Contest must be initiated or prosecuted in Landlord's name; and (c) such joinder is at no out-of-pocket cost to Landlord. In such case, Landlord shall reasonably cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control as owner of the Fee Estate and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs, for Tenant's Contest and Landlord's assistance with such Contest.

*10.3. Miscellaneous.* Tenant shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant's Contest of any Real Estate Taxes, Tenant shall pay (within the time frame permitted for payment of same as set forth in Section 5.1) the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant's Contest of a Law, Tenant shall comply with such final determination. So long as the Contest Conditions remain satisfied, Landlord shall enter no objection to any Contest. Landlord may not contest any matter for which Tenant is entitled to prosecute a Contest.

*10.4. Landlord in its Municipal Capacity.* Notwithstanding anything to the contrary in this Section 10, Landlord shall not be required to assist or side with Tenant in any Contest against the City of Hialeah in its municipal capacity.

## **11. INSURANCE**

The Tenant shall provide and maintain, on a primary basis and at its sole expense, at all times after the Effective Date until this Lease expires or is terminated, policies of insurance that insure the Tenant against any and all claims, demands, or causes of action for injuries received or damages to people or property relating to the Tenant's acts and omissions under this Lease. At a minimum, the Tenant shall maintain at all times the following insurance coverage, with the limits and endorsements described herein. The requirements contained herein, as well as the Landlord's review or acceptance of insurance maintained by the Tenant, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Tenant under this Lease.

*11.1 Commercial General Liability.* Tenant shall maintain Commercial General Liability with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/\$2,000,000
Products – Completed Operations	\$2,000,000
Personal and Adv. Injury	\$1,000,000
Fire Damage	\$50,000

Medical Expense  
Contractual Liability

\$5,000  
Included

The General Liability insurance form shall be no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent, without restrictive endorsements. Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability. The coverage shall include: (1) Bodily Injury and Property Damage; (2) Premises and Operations; (3) Independent Contractors; (4) Products and Completed Operations; (5) Broad Form or equivalent Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless provisions in the Agreement; (6) Broad Form or equivalent Property Damage Coverage; and (7) Personal Injury Coverage with employment and contractual exclusions removed and deleted.

*11.2 Business Automobile Liability.* Tenant shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Combined Single Limit / Each Accident. Coverage shall include liability for Owned, Non-Owned & Hired automobiles.

*11.3 Pollution Liability.* Tenant shall maintain Pollution Liability at a minimum limit not less than \$1,000,000 Each Occurrence / \$2,000,000 Aggregate including all sudden and non-sudden events.

*11.4 Excess Liability.* Tenant shall maintain Excess Liability at a limit of liability not less than \$5,000,000 Each Occurrence / \$5,000,000 Aggregate. Tenant shall include each required policy herein as an underlying policy on the Excess Liability, unless the total combined limit of the Excess Liability is satisfied in the required policy. Tenant shall endorse the Landlord as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Excess Liability provides coverage on a "True Following-Form" basis. This liability may be satisfied by Umbrella Liability form, and the limit may be satisfied by multiple layers of coverage. On or before March 1, 2020, the Tenant shall increase the limit of liability for the Excess Liability to an amount that is not less than \$10,000,000 Each Occurrence / \$10,000,000 Aggregate.

*11.5 Worker's Compensation Insurance & Employers Liability.* Tenant shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes. Tenant shall maintain Employers' Liability Limits not less than \$1,000,000 Each Accident, \$1,000,000 Disease Each Employee, and \$1,000,000 Disease Policy Limit.

*11.6 Additional Insured Endorsements.* Tenant shall endorse its insurance with the Landlord as an Additional Insured via blanket additional insured forms as follows: (1) for the Commercial General Liability, the Tenant shall endorse the Landlord with either a CG 2026 Additional Insured - Designated Person or Organization endorsement or CG 2010 Additional Insured - Owners, Lessees, or Tenants - Scheduled Person or Organization endorsement, or similar endorsement; (2) for the Business Automobile Liability, the Tenant shall endorse the Landlord with a CA 2048 - Designated Insured, or similar endorsement; (3) for the Pollution Liability, the Tenant shall endorse the Landlord with the standard Additional Insured endorsement filed by the insurer for use in the State of Florida; and (4) for the Excess Liability, the Tenant shall endorse the Landlord as an "Additional Insured" on the Umbrella or Excess Liability, unless the policy provides coverage to the underlying policies on a "True Following-Form" basis. The Additional Insured shall read "City of Hialeah, Florida, and the City Council"

for all endorsements, unless the endorsements are provided via blanket additional insured forms. These endorsements shall specifically state that the coverage afforded by the endorsement shall be provided on a primary and non-contributory basis. This primary and non-contributory language can be included in the additional insured endorsement, can be provided in a separate stand-alone endorsement, or this language can be included in the actual liability coverage form for the line of insurance coverage that is being evidenced to the Landlord. A copy of any endorsement issued to extend coverage to the Landlord must be provided when evidencing insurance to the Landlord.

*11.7 Waiver Of Subrogation.* Tenant agrees to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Tenant to enter into an pre-loss agreement to waive subrogation without an endorsement, then Tenant agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition specifically prohibiting such an endorsement, or voids coverage should Tenant enter into such an agreement on a pre-loss basis. A copy of any endorsement issued to extend coverage to the Landlord must be provided when evidencing insurance to the Landlord.

#### *11.8 CERTIFICATE(S) OF INSURANCE*

At least ten (10) Days prior to the Commencement Date, Tenant shall provide Landlord a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect. Said Certificate of Insurance shall provide for a minimum of thirty (30) days prior written notice to the Landlord of any cancellation or non-renewal of coverage. The Tenant shall ensure that such notice is provided to the Landlord. The Certificate of Insurance shall identify the Landlord's RFP (2013-14-9500-00-002) in the Description of Operations section of the Certificate. The Certificate Holder shall be identified as:

Mayor  
City of Hialeah  
501 Palm Avenue (4th floor)  
Hialeah, FL 33010-4719

The Certificates of Insurance shall evidence a waiver of subrogation in favor of the Landlord, that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement for premium payments by the Landlord. The Certificate of Insurance shall be provided to the City Attorney's Office, at the following address:

City Attorney  
City of Hialeah  
501 Palm Avenue (3rd floor)  
Hialeah, FL 33010-4719

Copy to: City of Hialeah  
Risk Management Division  
501 Palm Avenue (3rd floor)  
Hialeah, FL 33010-4719

*11.9 Deductibles, Self-Insured Retentions, And Supplemental Coverage.* Tenant shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention. When a self-insured retention or deductible exceeds Two Hundred Fifty Thousand Dollars (\$250,000) for any of the foregoing required policies, the Landlord reserves the right, but not the obligation, to review and request a copy of the Tenant's most recent annual report or audited financial statements to determine the reasonability of the retention levels, based on the financial capacity of Tenant. All self-insured retentions shall appear on the Certificate of Insurance and shall be subject to the Landlord's approval. At the Landlord's option, the Tenant may be required to reduce or eliminate the self-insured retentions, or the Tenant shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The Landlord shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Tenant and any subcontractor providing the insurance.

For policies written on a "Claims-Made" basis, Tenant shall maintain a Retroactive Date prior to or equal to the Effective Date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggers the right to purchase a Supplemental Extended Reporting Period (SERP) coverage during the term of this Agreement, Tenant agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Tenant of the obligation to provide replacement coverage.

*11.10 Right To Revise Or Reject.* The Landlord reserves the right, but not the obligation, to reject any insurance policies that fail to meet the criteria stated herein. Additionally, the Landlord reserves the right, but not the obligation, to review or reject any insurer providing coverage due to its poor financial condition or failure to operate in compliance with Applicable Laws. Neither the Landlord's approval of any insurance provided by the Tenant or a subcontractor, nor the Landlord's failure to disapprove such insurance, shall relieve the Tenant or a subcontractor of any part or all of its responsibility for any liability, damages, or accidents, as set forth herein.

*11.11 Minimum Requirements for Insurance Companies.* All of the insurance provided by the Tenant pursuant to this Agreement shall be issued by an insurance company or companies authorized and licensed to do business in the State of Florida with a minimum rating of "A" in accordance with the latest edition of A.M. Best's Insurance Guide. Additionally, the Financial Category Size must be "X" or greater.

*11.12 Other Insurance Requirements.* At its option, the Landlord may allow the Tenant to be self-insured for one or more lines of coverage. In such circumstances, the Tenant shall be required to demonstrate to the satisfaction of the Landlord that the Tenant has adequate financial

resources to defend and cover all claims in the amounts and categories required by the Landlord.

The Tenant shall immediately advise the Landlord of actual or potential litigation that will reduce the coverage provided to the Landlord.

An insurer shall have no right of recovery against the Landlord. The required insurance policies shall protect the Tenant and the Landlord, and they shall be the primary coverage for any losses covered by the policies. The Tenant shall confirm that any company issuing insurance pursuant to this Agreement agrees it has no recourse against the Landlord for payment of premiums or assessments in any form for such insurance.

The Tenant shall be responsible for all of its subcontractors (if any) and their insurance. Each subcontractor shall provide certificates of insurance to the Tenant that demonstrate coverage and terms in compliance with the requirements applicable to the Tenant.

Neither approval by the Landlord of any insurance supplied by the Tenant or a subcontractor, nor a failure to disapprove such insurance, shall relieve the Tenant or any subcontractor of their responsibility for liability, damages, and accidents as set forth herein.

## **12. LOSSES AND LOSS PROCEEDS**

*12.1. Notice.* If either party becomes aware of any Casualty or any actual, threatened, or contemplated condemnation, then such party shall promptly Notify the other in writing.

*12.2. Effect of Casualty.* If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; (c) Tenant or those claiming under Tenant shall Restore with reasonable promptness regardless of cost; and (d) all Property Insurance Proceeds shall be applied to Restore, with any Property Insurance Proceeds (and the rights thereto) arising from the Casualty remaining after Restoration being paid to Tenant or, at Tenant's direction, those claiming under Tenant.

*12.3. Adjustment of Claims; Use of Property Insurance Proceeds.* Tenant or those claiming under Tenant shall have the sole right and authority to adjust and/or settle any insurance claim. Property Insurance Proceeds shall be disbursed Depository, to be released in installments for Restoration provided that Restoration Funds are sufficient to Restore, with any balance remaining after Restoration is completed being disbursed to Tenant or, at Tenant's direction, to those claiming under Tenant. If Restoration Funds are insufficient to Restore, then Tenant shall nevertheless begin to Restore at its expense until such time as the Restoration Funds are sufficient to complete Restoration or shall deposit the difference with the Depository. To obtain each such disbursement, there shall be delivered to Depository the below, or substantially similar documentation as may be required by such Depository:

*12.3.1 Architect's Certificate.* A certificate of a licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons for Restoration; (b) Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise satisfactorily; (c) the sum being requested does not exceed the amount then due and payable; (d) except in the case of the final disbursement of Restoration Funds, the remaining Restoration Funds after disbursement are reasonably anticipated to suffice to pay for the

remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Tenant has Substantially Completed Restoration and obtained a temporary certificate of occupancy for the Restoration to the extent Law requires;

12.3.2 *Status of Title.* Evidence reasonably satisfactory to Depository that no Prohibited Lien exists, except any to be fully paid from the current disbursement;

12.3.3 *Lien Waivers.* If required by the Depository, progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement and, in the case of the final draw, delivered (or simultaneously delivers in exchange for payment) final lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration; and

12.3.4 *Other.* Such other documents, deliveries, certificates, and information as Depository reasonably requires.

### **13. REPRESENTATIONS AND WARRANTIES OF LANDLORD AND TENANT**

13.1. *Landlord's Representations and Warranties.* Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Effective Date. Landlord's representations and warranties in this Subsection shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

13.1.1 *Due Authorization and Execution.* Landlord has full right, title, authority, and capacity to execute and perform this Lease, and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Landlord is a party or is bound. Tenant makes to Landlord representations and warranties reciprocal to those in the preceding sentence. During the Term, any document requiring execution by Landlord may be executed by the Mayor or his designee and, if so executed, it shall be deemed to have been properly authorized and binding on Landlord without the need for any further verification of authority or execution by anyone else (the foregoing shall not be construed as a waiver of approval or authorization of the Council of the City of Hialeah, or its Mayor, but rather, shall mean that any such approval or authorization of such City Council, or Mayor, if any is required, has been obtained prior to the execution by the Mayor, or his designee, and is evidenced by such execution, and no Person shall be required to look behind such execution as to approval or authority to execute and bind).

13.1.2 *No Litigation.* As of the Effective Date and as of the Commencement Date, there is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord, any constituent entity or individual of Landlord, or the Premises that would, if adversely determined, materially adversely affect Landlord, the Premises, and this Lease.



13.1.3 *Liens.* As of the Effective Date, the Premises are free and clear of any liens or encumbrances.

13.1.4 *Parties Entitled to Possession.* As of the Effective Date, Landlord and Tenant are the only parties entitled to possession of the Premises and no other Person has any right to lease, use, have possession of or occupy the Premises.

13.2. *Tenant's Representations and Warranties.* Tenant represents and warrants to Landlord that the following facts and conditions exist and are true as of the Effective Date. Tenant's representations and warranties in this Subsection shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

13.2.1 *Due Authorization and Execution.* Tenant has full right, title, authority, and capacity to execute and perform its obligations under the Lease-Related Documents to which Tenant is a party and referred to or required by this Lease; the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Tenant; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound.

13.2.2 *No Litigation.* As of the Effective Date, there is no existing or, to Tenant's knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Tenant that would, if adversely determined, materially adversely affect the ability of Tenant to perform its obligations under the Lease.

#### 14. LANDLORD'S TRANSFERS

14.1. *Landlord's Right to Convey.* Landlord may Transfer the Fee Estate in whole or in part from time to time.

14.2. *Release of Landlord.* Upon any Transfer of the entire Fee Estate comprising or including the Premises, the Landlord shall be automatically freed and relieved from all liability for performance of any covenants or obligations to be performed by Landlord after the Transfer other than liability previously accrued, provided that the successor Landlord assumes Landlord's future obligations under this Lease. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

#### 15. ASSIGNMENT OF LEASE

15.1. No assignment of this Lease or any right or responsibility occurring under this Lease, shall be made in whole or in part by the Tenant without the prior express written consent of the Mayor. The Mayor shall have the right to approve or deny, with or without cause, any proposed or actual assignment by the Tenant. Any assignment of this Lease made by the Tenant without the express written consent of the Mayor shall be null and void and shall be grounds for the Landlord to declare a default of this Lease.

15.2. If any assignment is approved by the Mayor, the assignee shall fully assume all of the liabilities of the Tenant under the Lease.

15.3 In any instance wherein Tenant desires to effect an assignment, Tenant shall submit to Landlord all documents and information as Landlord may reasonably request to permit Landlord to evaluate whether the proposed assignee has the integrity, reliability, experience, creditworthiness and capability in all respects to fully perform in good faith the Exclusive Franchise Agreement requirements and the obligations of all other lease and use agreements, including but not limited to this Lease. Tenant shall pay all of Landlord's reasonable out-of-pocket costs and expenses related to its review and approval of the assignment, including Legal Costs.

## 16. SUBLEASES

16.1. Tenant agrees not to sublet all or any part of the Premises without the prior express written consent of the Mayor. The Mayor shall have the right to approve or deny, with or without cause, any proposed sublease or actual sublease by the Tenant. Any sublease of this Lease made by the Tenant without the prior express written consent of the Mayor shall be null and void and shall be grounds for the Landlord to declare a default of this Lease.

16.2. If any sublease is approved by the Mayor, the sub-tenant shall fully assume all of the liabilities of the Tenant under the Lease; however, Tenant shall not be released in any way from its obligations and liabilities under the Lease.

16.3 In any instance wherein Tenant desires to sub-lease, Tenant shall submit to Landlord all documents and information as Landlord may reasonably request to permit Landlord to evaluate whether the proposed sub-lessee has the integrity, reliability, experience, creditworthiness and capability in all respects to fully perform in good faith the Exclusive Franchise Agreement requirements and the obligations of all other lease and use agreements, including but not limited to this Lease. Tenant shall pay all of Landlord's reasonable out-of-pocket costs and expenses related to its review and approval of the assignment, including Legal Costs.

## 17. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

17.1. *Quiet Enjoyment.* So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of Exclusive Franchise Agreement and this Lease, without hindrance or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord.

17.2. *Access and Inspection.* Landlord in its capacity as the owner of the Fee Estate and its agents, representatives, and designees may enter the Premises upon reasonable notice, which the parties agree can be one Business Day's notice by email or phone, and accompanied by a representative of Tenant (which Tenant agrees to make available after reasonable notice),

during regular business hours, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults (to the extent permitted by this Lease); (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be reasonably necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective transferee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises, shall not be entitled to enter secured areas without permission from and accompaniment by the occupant, and shall comply with Tenant's reasonable instructions. Tenant shall not be in default of the obligations contained in this Section 17.2 until Tenant has received a Notice giving Tenant 5 days opportunity to allow access and inspection by Landlord. If Tenant fails to allow access and inspection, then this will constitute an Event of Default and the Landlord may proceed with its remedies under Section 18 of the Lease, and Tenant waives all defenses except the defense of performance, in any action brought by Landlord to enforce its rights under this Section.

## **18. EVENTS OF DEFAULT; REMEDIES**

*18.1. Definition of "Event of Default."* An "Event of Default" means the occurrence of any one or more of the following:

*18.1.1 Monetary Default.* If a Monetary Default occurs and continues for 5 days after Notice from Landlord, specifying which category of payments that have not been paid in full.

*18.1.2 Prohibited Liens.* If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 30 days after Notice from Landlord.

*18.1.3 Bankruptcy or Insolvency.* If Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any bankruptcy proceeding, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease.

*18.1.4 Appointment of Receiver.* The appointment of a receiver for Tenant and/or the Premises, whether voluntarily or involuntarily, with or without the consent of Landlord.

*18.1.5 Breach of Transfer Provisions.* If any Transfer is made by Tenant that violates the requirements of Section 15 and 16 of this Lease.

*18.1.6 Default under or Termination of Exclusive Franchise Agreement.* A Default by the Tenant in its capacity of Contractor to perform any of its material obligations under the Exclusive Franchise Agreement, or the termination thereof by the City.

*18.1.7 Nonmonetary Default.* If any other Nonmonetary Default occurs and Tenant does not cure it within 30 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within

30 days from such Notice, if Tenant shall not (1) duly commence such cure within such period and then diligently prosecute such cure to completion; and (2) complete such cure within a reasonable time under the circumstances.

*18.2. Remedies.* If an Event of Default occurs which is not cured by Tenant after Notice, then Landlord may, but is not required, to issue a Lease Termination Notice and shall have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord's remedies include:

*18.2.1 Termination of Tenant's Rights.* Landlord may terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

*18.2.2 Taking Possession.* Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

*18.2.3 Suits Before Expiration Date.* Landlord may sue for damages or to recover Rent from time to time at Landlord's election.

*18.2.4 Receipt of Moneys.* No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord's election, on account of Tenant's liability.

*18.2.5 No Waiver.* No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition

of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

18.2.6 *Security Devices.* Landlord may change the locks and other security devices providing admittance to the Premises as permitted by law.

18.2.7 *Damages.* Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord's election, either (a) the present value, calculated at a discount rate equal to the then-current Prime Rate plus five percent (5) per annum, of the excess of the total Rent and Additional Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent and Additional Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, (a) Landlord need not commence separate actions to enforce Tenant's obligations for each period of Rent and/or Additional Rent not paid, or each period of accrual of damages for Tenant's Default, but may accelerate all amounts due under the Lease and may bring and prosecute a single combined action for all such Rent, Additional Rent and damages; and (b) Landlord may not recover any consequential damages for Tenant's Default.

18.2.8 *Injunction of Breaches.* Landlord may obtain a court order enjoining Tenant from continuing any Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

18.2.9 *Restoration Funds.* Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.

18.3. *Proceeds of Reletting.* Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

18.3.1 *Landlord's Costs.* First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

18.3.2 *Preparation for Reletting.* Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

18.3.3 *Costs of Maintenance and Operation.* Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

18.3.4 *Residue.* Fourth, to pay to itself any balance remaining on account of Tenant's liability to Landlord.

18.4. *Tenant's Late Payments; Late Charges.* If Tenant fails to make any payment to Landlord required under this Lease within 5 days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within 10 days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to \$500 for any payment that Tenant fails to pay within 10 days after Notice that such payment is delinquent. Such administrative charge is

intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

18.5. *Landlord's Right to Cure.* If Tenant at any time fails to (a) make any payment that could create a material risk of forfeiture of the Fee Estate or (b) take any action this Lease requires when there is already an Event of Default, then Landlord, if such breach is not cured after Notice to Tenant, or in an emergency with such Notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (i) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this Subsection; and (ii) Default Interest.

18.6. *Holding Over.* If for any reason or no reason Tenant remains in the Premises after the Expiration Date, then Landlord will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to two times the Rent and Additional Rent payable under this Lease.

18.7. *Waivers; Venue.* TO THE EXTENT PERMITTED BY LEGAL REQUIREMENTS, LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT REGARDING THE PREMISES, ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. LANDLORD AND TENANT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN MIAMI-DADE COUNTY, FLORIDA, FOR ANY AND

ALL CLAIMS OR DISPUTES ARISING OUT OF, TO ENFORCE, CONSTRUED, OR OTHERWISE RELATING TO THIS LEASE, AND ANY APPELLATE COURT FROM ANY SUCH COURTS, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT THEREON, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH COURTS. LANDLORD AND TENANT EACH AGREES THAT A FINAL JUDGMENT (AFTER EXHAUSTION OF APPEALS OR EXPIRATION OF THE TIME TO APPEAL) IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. LANDLORD AND TENANT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE IN ANY SUCH COURT. TENANT AGREES NOT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY LANDLORD FOR POSSESSION AND/OR TERMINATION, OR IN RESPONSE TO ANY CAUSE OF ACTION UNDER THE SUMMARY PROCEEDINGS RULES, I.E., IN ANY ACTION AIMED SOLELY AT SECURING OR GAINING POSSESSION OF, OR TERMINATION OF THE LEASEHOLD INTEREST ON, THE PREMISES ("EVICITION ACTION"). LANDLORD AND TENANT AGREE THAT ANY COUNTERCLAIM THAT TENANT MAY HAVE TO THE EVICTION ACTION SHALL BE FILED AS A SEPARATE ACTION AND SHALL NOT BE FILED IN THE EVICTION ACTION. LANDLORD SHALL NOT RAISE AS A DEFENSE IN TENANT'S SEPARATE ACTION THAT SUCH ACTION IS WAIVED AND/OR SHOULD HAVE BEEN BROUGHT AS A COUNTERCLAIM IN THE EVICTION ACTION, OR RAISE ANY DEFENSE OF COLLATERAL ESTOPPEL, RES JUDICATA, CLAIMS SPLITTING, OR OTHER SIMILAR DEFENSE. IN THE EVENT THAT THE STIPULATIONS CONTAINED IN THIS SECTION ARE NOT ENFORCEABLE AS A MATTER OF LAW, THEN TENANT SHALL HAVE NO RESTRICTIONS IN BRINGING ANY COUNTERCLAIMS IN ANY EVICTION ACTION.

*18.8. Accord and Satisfaction; Partial Payments.* No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

*18.9. Miscellaneous.* Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

*18.9.1 Survival.* No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

*18.9.2 Multiple Suits.* Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

*18.9.3 Receipt of Monies.* No receipt of moneys by Landlord from Tenant after the giving a termination notice or a notice to obtain possession, after expiration of the applicable cure period or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice previously given to Tenant, waive Landlord's right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final and unappealable order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment. Any sums so collected shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

*18.9.4 No Double Recovery.* In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

*18.10. Landlord Default and Tenant Remedies.* Landlord shall not be in default under this Lease unless Landlord does not cure the default within 60 days after Notice from Tenant describing it in reasonable detail, or, in the case of a nonmonetary default that cannot with due diligence be cured within 60 days from such Notice, if Landlord shall not (a) duly commence such cure within such period and then diligently prosecute such cure to completion; and (b) complete such cure within a reasonable time under the circumstances (not necessarily limited to 60 days). If Landlord fails to timely cure, Tenant may exercise any and all rights and remedies available to it at law, in equity or under this Lease.

## **19. END OF TERM**

Upon any Expiration Date: (a) all Buildings and Building Equipment (if included in the Lease) shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, reasonable wear and tear excepted and subject to any Loss that this Lease does not require Tenant to Restore; (c) Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all: (i) Subleases, and (ii) liens; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (f) the parties shall reasonably cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires; (g) the parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default); (h) Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the



Premises.

## 20. NOTICES

All notices, requests, authorizations, approvals, protests, and petitions provided for herein shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by telecopy or email. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt. For the present, the Tenant and the Landlord designate the following as the appropriate people and places for delivering notices and other documents:

As to Landlord:

Mayor  
City of Hialeah  
501 Palm Avenue (4<sup>th</sup> floor)  
Hialeah, FL 33010-4719  
Telephone: (305) 883-5800  
Facsimile: (305) 883-5992

Copy to:

City Attorney  
City of Hialeah  
501 Palm Avenue (4th floor)  
Hialeah, FL 33010-4719  
Telephone: (305) 883-5854  
Facsimile: (305) 883-5896

Director of Public Works  
City of Hialeah  
3700 West 4<sup>th</sup> Avenue  
Hialeah, FL 33012  
Telephone: (305) 556-3800  
Facsimile: (305) 827-0811

As to Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Both Parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other Party of such change.

## 21. FURTHER ASSURANCES

Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

## 22. AMENDMENTS AND MODIFICATIONS

**22.1 General Requirements.** This Lease constitutes the entire Lease and understanding between the Parties hereto. This Lease shall not be considered modified, altered, changed or amended in any respect unless the Lease is amended in writing and the amendment is signed by the Tenant and the Council or its designee.

**22.2 Amendments Due To Changes In Law.** The Landlord and the Tenant understand and agree that changes in the Applicable Laws may require amendments to some of the conditions or obligations of this Lease. In the event any future change in any Applicable Law materially alters the obligations of the Tenant or the Landlord, then the provisions of this Lease may need to be modified. The Landlord and Tenant agree to enter into good faith negotiations regarding amendments to this Lease, which may be required in order to implement changes for the public welfare or due to a Change in Law.

**22.3 Successors and Assigns.** This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Landlord and Tenant) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

## 23. COSTS AND EXPENSES; LEGAL COSTS

In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or

curing the other party's default. In connection with any amendments to this Lease, Legal Costs shall be allocated as provided for in such Lease amendment.

#### **24. NO CONSEQUENTIAL DAMAGES.**

Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other. The limitation of liability herein shall not apply to any indemnification for third party claims available at law or pursuant to, but subject to the limitations in, Section 9. This provision shall survive the Expiration Date or earlier termination of this Lease.

#### **25. WAIVER OF RIGHTS**

No delay or failure to exercise a right under this Lease shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the Landlord or Tenant at any time to require performance by the other Party of any term in this Lease shall in no way affect the right of the Landlord or Tenant thereafter to enforce same. Nor shall waiver by the Landlord or Tenant of any breach of any term of this Lease be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the Party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Lease. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

#### **26. SURVIVAL**

All rights, obligations and provisions that by their nature are to be performed after any termination of this Lease, shall survive any such termination.

#### **27. FORCE MAJEURE**

Whenever a period of time is herein prescribed for action to be taken by a party, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party; it being specifically understood and agreed, however, that the financial inability of a party hereto to perform any of its obligations hereunder shall in no way or manner be deemed to be an act of *force majeure*.

Nothing herein shall excuse or delay the payment by Tenant of any sums to Landlord or third parties hereunder.

**28. TIME IS OF THE ESSENCE**

Subject to any extensions expressly provided in this Lease and *force majeure*, time is of the essence as to the performance of the provisions of this Lease by Landlord and Tenant.

**29. CAPTION**

The captions or headings of this Lease are for convenience and reference only. They in no way affect this Lease or the interpretation thereof.

**30. COUNTERPARTS**

This Lease may be executed in counterparts.

**31. DELIVERY OF DRAFTS**

Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts, including any recordings of negotiations of this Lease, shall bind neither party in any way. Such draft(s) and comment(s) and recording(s) shall not be considered in interpreting this Lease.

**32. ENTIRE AGREEMENT**

This Lease contains all terms, covenants, and conditions between Landlord and Tenant about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

**33. GOVERNING LAW**

This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Florida. Venue shall lie exclusively in Miami-Dade County, Florida.

**34. PARTIAL INVALIDITY**

If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

**35. PRINCIPLES OF INTERPRETATION**

No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its

negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "( or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Buildings; Land; Leasehold Estate; Premises; Structure; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

### **36. REASONABLENESS**

Wherever this Lease requires the consent or approval of a party, except as and to the extent expressly set forth to the contrary in this Lease, such party shall not unreasonably withhold approval and this means: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter. The parties agree to deal with each other fairly and in good faith.

### **37. RADON**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from the county health department.

### **38. NONDISCRIMINATION**

Tenant represents and warrants to Landlord that Tenant does not and will not engage in unlawful discriminatory practices and that there shall be no unlawful discrimination in connection with Tenant's performance under this Lease or in the use of the Premises, on account of race, color, sex, religion, age, handicap, disability, marital status, national origin, ancestry, familial status, or sexual orientation. Tenant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, national origin, ancestry, familial status, or sexual orientation unlawfully be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Lease in the use of the Premises. Landlord's sole remedy for breach of the provisions of this Section shall be specific performance.

### 39. CONFLICT OF INTEREST

Tenant represents and warrants to Landlord that it has not employed or retained any person or company currently employed by Landlord to solicit or secure this Lease and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Lease. Tenant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of Landlord in connection with this Lease has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned by Tenant, except as fully disclosed and approved by Landlord.

### 40. SOVEREIGN RIGHTS

*40.1. Sovereign Rights as Municipality.* Notwithstanding anything to the contrary in this Lease, Landlord shall retain all of its sovereign prerogatives and rights as a municipality under State law with respect to the Premises. Nothing in this Lease shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes. It is expressly understood that:

(a) Landlord retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a municipal corporation under State law and shall in no way be estopped by virtue of its execution of this Lease from withholding or refusing to issue any approvals in its municipal regulatory capacity of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Improvements, or the operation thereof, or be liable for the same; and

(b) Landlord shall not by virtue of this Lease or any other agreement entered into by Landlord relating to the Premises, be obligated in its municipal regulatory capacity to grant Tenant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Buildings.

(c) Notwithstanding and prevailing over any contrary provision in this Lease, any covenant or obligation of Landlord in its municipal regulatory capacity that may be contained in this Lease shall not bind the City of Hialeah to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or revoked in the discretion of Landlord in its municipal regulatory capacity or other applicable governmental agencies in the exercise of its police power.

*40.2. No Partnership or joint Venture.* Nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among any of the parties or as constituting any party as the agent or representative of any other party.

*40.3. Public Disclosure Requirements.* Throughout the term of this Lease, all documents, records and materials of any nature that are submitted to Landlord relating to construction, sale, lease, operation or any other activity occurring on the Premises shall be public records and shall be provided as required by Chapter 119, Florida Statutes, and pursuant

to the City's Citizens' Bill of Rights. Tenant shall be entitled to assert any lawful exemption or defense to disclosure.

#### **41. COMPLIANCE WITH LAWS AND REGULATIONS**

Tenant shall at all times comply with all Applicable Laws now in effect or hereafter enacted, which are applicable in any way to Tenant, its officers, employees, agents, or subcontractors.

#### **42. PERMITS AND LICENSES**

Tenant, at its sole cost and expense, shall obtain and maintain throughout the term of this Lease all permits, licenses and approvals necessary or required for Tenant to perform the work and services required by it under this Lease and the Exclusive Franchise Agreement.

#### **43. REMEDIES NOT EXCLUSIVE**

The remedies specified in this Lease shall supplement, and not be in lieu of, any other remedies provided at law or in equity. The payment of any administrative charges by the Tenant shall not constitute a defense for the Tenant, nor an election of remedies by the Landlord, nor serve as the basis for a claim of estoppel against the Landlord, nor prevent the Landlord from terminating this Lease. The Landlord's decision to refrain from assessing administrative charges, or suspending or terminating this Lease, or seeking any other relief from any failure in the Tenant's performance, shall not constitute a waiver of the Landlord's right to pursue any other remedy or a waiver of its right to pursue a remedy for any future failure by the Tenant. No remedy conferred by this Lease is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

Attest:

CITY OF HIALEAH, by and through its  
City Council

\_\_\_\_\_  
Marbelys Fatjo, City Clerk

By: \_\_\_\_\_  
Carlos Hernandez, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2015

(CITY SEAL)

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Lorena Bravo, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 2015

WITNESSES:

XYZ COMPANY, INC.

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Signature

ATTEST:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
SECRETARY

\_\_\_\_ day of \_\_\_\_\_, 2015



STATE OF FLORIDA       )  
                                  ) SS:  
CITY OF                    )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_, of XYZ Company, Inc., an organization authorized to do business in the State of Florida, and he/she executed the foregoing Agreement as the proper official of \_\_\_\_\_ for the uses and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and City aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

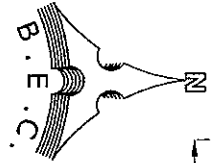
\_\_\_\_\_  
NOTARY PUBLIC

My Council Expires:

# EXHIBIT 3

FLEET MAINTENANCE BAYS 11, 12, AND 13

EAST 8th AVENUE (LEJEUNE ROAD)



0 50' 100'  
GRAPHIC SCALE

+/- 1812'

+/- 406'

BAYS  
11 AND 12

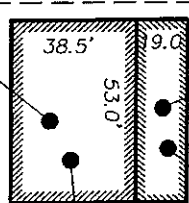
BAY  
13

PARCEL E

EAST 56th STREET

BUILDING  
FLEET  
MAINTENANCE  
BAY

AREA  
2063 sq. ft



AREA  
1007 sq. ft

PARCEL D  
MULCHING  
SITE

EXHIBIT

A

SEABOARD ALL-FLORIDA RAILROAD

**Attachment "B" to Addendum No. 4**

**City of Hialeah RFP No. 2014-15-9500-00-002**

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Space Above This Line for Recording Data

## **CONSENT AND USE AGREEMENT (Vehicle Washing Facility)**

**THIS CONSENT AND USE AGREEMENT** (hereinafter referred to as the "Consent and Use Agreement" or "Agreement"), by the **CITY OF HIALEAH**, whose mailing address is 501 Palm Avenue, 4<sup>th</sup> Floor, Hialeah, FL 33010, hereinafter referred to as "CITY", and **XYZ COMPANY, INC.**, whose mailing address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR", is entered into as of \_\_\_\_\_, 2015.

### **WITNESSETH:**

**WHEREAS**, the City owns the Truck Washing Facility located in close proximity to the City's Solid Waste Equipment Yard leased by Contractor in Hialeah, Florida (hereinafter referred to as the "Vehicle Washing Facility"), which is more particularly described and depicted in Exhibit "A" attached hereto; and

**WHEREAS**, on \_\_\_\_\_, 2015, the City Council of the City of Hialeah, passed and adopted Resolution No. \_\_\_\_\_, approving the provisions of the Exclusive Franchise Agreement entered into by and between the City and the Contractor, dated \_\_\_\_\_, 2015 (hereinafter referred to as the "Exclusive Franchise Agreement"); and

**WHEREAS**, the Exclusive Franchise Agreement provided the Contractor with an option to use the Vehicle Washing Facility to wash the vehicles used by the Contractor to provide Residential Collection Service under the Exclusive Franchise Agreement, if the Contractor delivered timely written notice to the City that it wished to use the Vehicle Washing Facility; and

**WHEREAS**, the Contractor timely delivered notice to the City exercising its option to use the Vehicle Washing Facility to wash the vehicles used by the Contractor to provide Residential Collection Service, subject to the terms of the Exclusive Franchise Agreement and this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the City consents to the Contractor's use of the Vehicle Washing Facility, subject to the terms and provisions of the Exclusive Franchise Agreement and upon the further terms and conditions of this Agreement.

**1. RECITAL WHEREAS CLAUSES.** The above Recital Whereas Clauses are true and correct and are hereby made an integral part of this Agreement.

**2. EXCLUSIVE FRANCHISE AGREEMENT.** All the terms and provisions of the Exclusive Franchise Agreement are incorporated in by reference in this Agreement as if fully stated herein, and are all agreed to by the Contractor as material terms included in, and as a part of, this Agreement.

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**3. EFFECTIVE DATE.** This Agreement shall be deemed effective as of the date on which the last of the parties signs this Agreement.

**4. CONSENT OF USE.** By this Agreement, the City agrees to the Contractor's use of the Vehicle Washing Facility, and the Contractor agrees to use of the Vehicle Washing Facility, subject to, and in accordance with, the terms and provisions of the Exclusive Franchise Agreement, and this Agreement.

**5. TERM.** The term of this Agreement shall commence on August 1, 2015 and the Agreement shall continue until: (a) the expiration of the Exclusive Franchise Agreement or its earlier termination by the City; (b) the expiration of the Equipment Yard Lease or its earlier termination by the City; or (c) the termination of this Agreement by the City.

**6. FEES AND OTHER CHARGES.** For its use of the Vehicle Washing Facility, the Contractor shall pay the City fees or other charges as set forth in the Schedule attached as Exhibit "B" hereto, as well as the cost of all utilities, which shall include, but not be limited to, electricity, water, and sewer ("Utilities"), which are utilized by the Contractor in the washing of vehicles at the Vehicle Washing Facility, in accordance with paragraph 40.5 of the Exclusive Franchise Agreement or otherwise imposed by The City. The Contractor further agrees to pay all impositions made by any governmental authority, including the City acting in its governmental or regulatory capacity, which at any time before or during the Term and applicable to the Term or any part of it, may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Vehicle Washing Facility or the use thereof by Contractor, including but not limited to: (a) all general and special taxes (including real estate, sales, use and the like), (b) municipal water, water meter and sewer rents, rates and charges, (c) excises, (d) levies, (e) license and permit fees, (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, (g) fines, penalties and other governmental charges and any interest or costs with respect thereto, and (h) any and all other levies, fees, rents, proffers, assessments or taxes and charges, general and special, ordinary and extraordinary, foresee and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto. The Contractor agrees to pay all such fees, charges and costs. The Contractor's failure to pay such fees, charges and costs shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement or other applicable provisions of this Agreement.

#### **7. USE AND REPAIR.**

7.1 The Contractor may use the Vehicle Washing Facility to wash its vehicles that are used by the Contractor to provide Residential Collection Service under the Exclusive Franchise Agreement. The Contractor's use of the Vehicle Washing Facility shall be exclusive.

7.2 The City shall have the right to establish and enforce reasonable rules and regulations ("Rules and Regulations") which it may make, from time to time, regarding the Contractor's use of

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the Vehicle Washing Facility to promote the safety, care, and cleanliness of the grounds where the Vehicle Washing Facility is located, as well as for the preservation of good order, and the access and egress of the Contractor's vehicles into and out of the Vehicle Washing Facility. The Contractor shall obey all such Rules and Regulations of which it has received reasonable notice, and the failure to do so shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement, or other applicable provisions of this Agreement.

7.3 The City warrants that to the best of its knowledge the improvements on the Vehicle Washing Facility comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances including but not limited to zoning and requirements under Americans with disability Act or any similar laws ("Applicable Requirements") that were in effect at the time of the construction of the Vehicle Washing Facility or which have become in force subsequently thereto which are applicable to the Vehicle Washing Facility. The Contractor is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for the Contractor's intended use, and acknowledges that past uses of the Vehicle Washing Facility are no guarantee, and cannot be relied on, as to the current compliance of the Vehicle Washing Facility with all Applicable Requirements. If the Applicable Requirements are hereafter changed so as to require any expenditure by the City to bring the Vehicle Washing Facility into compliance with any Applicable Requirements, then the City, at its sole discretion, may terminate this Consent and Use Agreement, whereupon the parties shall be released of all rights and obligations thereunder.

7.4 Contractor acknowledges that: (a) it has been given an opportunity to inspect the Vehicle Washing Facility, (b) it has been advised by the City to satisfy itself with respect to the condition of the Vehicle Washing Facility (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for the Contractor's intended use, (c) Contractor has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its use of the Vehicle Washing Facility, (d) it is not relying on any representation as to the condition of the Vehicle Washing Facility made by City of any one on the City's behalf and (e) neither City nor City's agents have made any oral or written representations or warranties with respect to said matters other than as set forth in this Agreement.

7.5 The City shall not be required to make any repairs of any kind in, on or about the Vehicle Washing Facility, which the Contractor agrees to accept and use in its "As Is" condition. The Contractor shall use reasonable care in its use of the Vehicle Washing Facility, and shall, at its own cost and expense, maintain it in good working order and make all necessary repair or replacements to the Vehicle Washing Facility and the fixtures and equipment therein, including but not limited to vehicle washing equipment, ordinary wear and tear excepted. Furthermore, Contractor shall be responsible to make all necessary repairs or replacements to the Vehicle Washing Facility required as a result of the acts or omissions or negligence of the Contractor, its agents and employees or invitees. If Contractor fails to make any necessary repair after 5 days prior written notice (except in case of an emergency, in which case no notice shall be required), The City

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may perform such repairs on Contractor's behalf, and Contractor shall promptly pay to the City a sum equal to 115% of the costs of such repairs. All such sums expended by the City on behalf of the Contractor in the performance of Contractor's obligation shall be deemed a "fee" and a monetary obligation of the Contractor. The City must approve all repairs, improvements, replacements or alterations to the Vehicle Washing Facility in advance. In the event of any interruption or malfunction of utility or service rendering the Vehicle Washing Facility inoperable, the City shall use reasonable diligence to restore the utility or service. However, any such interruption or malfunction, if restored within a reasonable time, shall not entitle Contractor to be relieved from any of its obligations under this Agreement, or grant Contractor the right of set-off or recoupment of Fees or Other Charges, payable pursuant to Section 6, or entitle Contractor to any damages.

**8. AMENDMENTS AND MODIFICATIONS.** This Agreement may not be amended or modified unless in writing, signed by the City and Contractor.

**9. ASSIGNMENT.** This Agreement may not be assigned or otherwise transferred by the Contractor without the prior written consent of the City. The City shall have the right to approve or deny, with or without cause, any proposed or actual assignment or transfer by the Contractor in the manner set forth in the Exclusive Franchise Agreement.

**10. INSURANCE.** The Contractor shall provide and maintain during the term of this Agreement until it expires or is terminated, policies of insurance as required by paragraph 52 of the Exclusive Franchise Agreement. Failure to do so shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement.

**11. DAMAGES AND INDEMNIFICATION.** The Contractor shall be liable to, and indemnify, the City to at least the same extent as provided for in paragraph 51 of the Exclusive Franchise Agreement including, but not limited to, the following:

**HAZARDOUS SUBSTANCES; ENVIRONMENTAL COMPLIANCE,  
AND REMEDIATION**

11.1. Restrictions. Contractor shall not cause or permit to occur on, under or at the Vehicle Washing Facility during the Term: (a) any violation of any Environmental Law (as the term "Environmental Law" is defined in the Equipment Yard Lease in effect); or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance (as the term "Hazardous Substance" is defined in the Equipment Yard Lease in effect) in violation of Environmental Laws, or the transportation to or from the Vehicle Washing Facility of any Hazardous Substance in violation of Environmental Laws.

11.2. Condition of Vehicle Washing Facility; Compliance; Clean-Up. Contractor acknowledges that it is fully familiar with the physical and environmental condition of the Vehicle Washing Facility and shall take the Vehicle Washing Facility in "AS IS" and "WHERE IS" condition without any representation or warranty whatsoever except as expressly set forth in this Agreement. Contractor shall, at Contractor's sole expense: (a) comply with all applicable

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Environmental Laws and, to the extent any applicable Environmental Law requires, clean up any Hazardous Substance Discharge (as the term "Hazardous Substance Discharge" is defined in the Equipment Yard Lease in effect); (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government (as the term "Government" is defined in the Equipment Yard Lease in effect) under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and any required financial assurances for such Hazardous Substances Discharge (as the term "Hazardous Substances Discharge" is defined in the Equipment Yard Lease in effect); (d) promptly and diligently carry out all such clean-up plans; (e) conduct and complete the Remedial Action, and indemnify the City for any non-performance of or delay in completion of the Remedial Action, except to the extent such non-performance of or delay in completion of the Remedial Action is caused by the acts or omissions of the City or the City's agent; and (f) as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, indemnify the City against any Hazardous Substances Discharge or violation of Environmental Law provided, however, in no event shall Contractor indemnify the City for events, occurrences or matters (i) caused by the acts or omissions of the City or the City's agent, or (ii) which are in existence prior to the Commencement Date, except to the extent such events, occurrences or matters are exacerbated by Contractor (in which event Contractor shall only indemnify the City with regards to such exacerbation). Without limiting the generality of the foregoing, Contractor shall comply with any conditions of any "no further action" determination as provided for and in conformance with Rule 62-780.680, Fla. Admin. Code. Neither the City nor Contractor shall modify the terms of any such "no further action" determination without the written consent of the other party. Any party's obligations under this Section 11.2 shall not limit such party's rights against third parties. Notwithstanding anything to the contrary in this Consent and Use Agreement, as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, as between the City and Contractor (and those claiming through Contractor, including Sub-Contractors), The City shall have no responsibility whatsoever regarding environmental matters and conditions on the Vehicle Washing Facility. Contractor shall obtain and maintain a pollution liability policy in compliance with the requirements in Section 52.3 of the Exclusive Franchise Agreement, to insure against risks including (if available) an unknown pollution condition, third-party claims alleging that pollution has migrated from the Vehicle Washing Facility and has caused bodily injury or damaged property off-Vehicle Washing Facility, allegations of bodily injury or property damage as a result of exposure to toxic substances on the Vehicle Washing Facility, and claims by Governments for natural resource damages. Contractor shall continue to maintain a pollution liability policy for the risks and in the amounts as required by this Section 11.2 throughout the term of this Consent and Use Agreement. Both the City and Contractor shall be named insureds, though the policy will provide that only Contractor is responsible for premium payments.

11.3. Subject to the limits on liability set forth in Florida Statutes Section 768.28, as amended from time to time, the City shall indemnify the Contractor and hold the Contractor harmless from any damages that are incurred by the Contractor as a result of any pollution in violation of Applicable Law (as the term "Applicable Law" is defined in the Equipment Yard Lease in effect) that exists on, under, or adjacent to the Vehicle Washing Facility prior to the Commencement Date. However, this indemnification does not extend to pollution in violation of Applicable Law or other environmental contamination or damages caused by the Contractor or its subcontractors on or after the Commencement Date. In the event of joint negligence on the part of the City and the Contractor, all losses and costs shall be apportioned in accordance with the provision of the Exclusive Franchise Agreement.

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## DAMAGES AND INDEMNIFICATION

11.4 Liability. The Contractor and its agents shall, in the use and operation of the Vehicle Washing Facility, exercise reasonable care in all of its actions. Contractor shall not do, or knowingly permit any officer, director, employee, agent or contractor of Contractor or any other Person, to do any act or thing upon the Vehicle Washing Facility or elsewhere which may reasonably be likely to subject the City to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of any Applicable Law or any other law, and shall use its best efforts to exercise such control over the Vehicle Washing Facility so as to fully protect the City against any such liability.

The Contractor shall be liable for all injuries and conditions that are caused by or result from the actions or inactions of the Contractor, including but not limited to the Contractor's failure to perform in accordance with the terms of this Agreement. To the extent that the City and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 11.7 below.

11.5 Contractor's Indemnification of The City. To the greatest extent allowed by Applicable Law, the Contractor releases, covenants not sue, and shall defend, indemnify, and hold harmless, the City, the Mayor, the Council and each of its members, and each of the the City's officials, officers, directors, employees, agents or representatives (collectively the "City Indemnified Parties") from and against every Indemnified Loss (as the term "Indemnified Loss" is defined in the Exclusive Franchise Agreement in effect) that is caused by or results from, directly or indirectly, in whole or in part, any act, omission, or negligence of the Contractor, any tier of subcontractor to the Contractor or any subcontractor to a subcontractor of the Contractor, or anyone employed by any of those persons for whose acts or omissions any of them may be liable, except to the extent resulting from the negligent conduct of any of the City Indemnified Parties. The obligation of the Contractor under this Section 11.5 is absolute and unconditional; it is not conditioned in any way on any attempt by any of the City Indemnified Parties to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against any of the City Indemnified Parties.

It is the intent of this Section 11.5 that the Contractor's indemnification obligations include all joint and several liability of the Contractor, any subcontractor to the Contractor, or any subcontractor to a subcontractor of the Contractor, and anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

The City may employ any attorney of its choice or may use its in-house counsel to enforce or defend the City's right to indemnity provided by this Agreement.

11.6 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the City Indemnified Parties by reason of any event for which Contractor

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has agreed to indemnify the City Indemnified Parties, then, upon demand by the City, Contractor shall resist or defend such claim, action or proceeding (in such City Indemnified Party's name, if necessary) by the attorneys for Contractor's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Contractor) or (in all other instances) by such attorneys as Contractor shall select and the City shall approve, which approval shall not be unreasonably withheld. The foregoing notwithstanding, and except with respect to personal injury or other liability claims within the coverage limits afforded by Contractor's liability insurance carrier, the City may, following such consultation with Contractor as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding. The Contractor shall advance or promptly reimburse the City any and all costs and expenses incurred by the City in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which any of the City Indemnified Parties is entitled to indemnification under this Agreement, whether or not any of the City Indemnified Parties is a party or potential party to it. The City shall consent to any proposed settlement, which such consent shall not be unreasonably withheld.

11.7 Contribution. In the event of joint negligence on the part of the City and the Contractor, any loss and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date. 11.8 Damages. The measure of damages to be paid by the Contractor to the City or by the City to the Contractor, due to any failure by the Contractor or the City to meet any of its obligations under this Agreement, shall be the actual damages incurred by the City or the Contractor. Neither Party shall have any liability under this Agreement for consequential, delay, special, indirect, or punitive damages. The foregoing shall apply without regard to either Party's rights to the insurance proceeds or other factors.

If the Contractor fails to comply with any Applicable Law, the Contractor shall promptly pay to the City the following:

- (a) All lawful fines, penalties, and forfeitures charged to the City by any judicial order or by any governmental agency responsible for the enforcement of the Applicable Law; and
- (b) The actual costs incurred by the City as a result of the Contractor's failure to comply with the Applicable Law, including any costs incurred in investigating and remedying the conditions which led to or resulted from the Contractor's failure to comply with the Applicable Law.

11.9 Liability of the City; No Personal Liability. The City shall not be liable in any event whatsoever for any injury or damage to Contractor or to any other person occurring on, in or about the Vehicle Washing Facility and its appurtenances, including, without limitation, the streets or sidewalk area within the Vehicle Washing Facility, nor for any injury or damage to the Vehicle Washing Facility or to any property belonging to Contractor or to any other Person (as

the term "Person" is defined in the Equipment Yard Lease in effect) which may arise from fire, breakage, use, misuse, abuse, of negligence of the Contractor or from any other cause whatsoever. The City, in its proprietary capacity, shall not be liable to Contractor or to any other Person for any failure of water supply, gas, electric current, nor for any injury or damage to any property of Contractor or of any other Person or to the Vehicle Washing Facility caused by or resulting from gasoline, oil, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water or rain which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Vehicle Washing Facility, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the City or the Contractor.

**11.10 Collection of Overdue Payments And Interest.** If the Contractor fails to pay any Fee or other amount that is owed to the City under this Agreement, the Contractor shall pay interest at the legal rate established by law, on the outstanding debt and the Contractor shall pay any expenses the City incurs in its efforts to recover the unpaid debt including Legal Costs (as the term "Legal Costs" is defined in the Equipment Yard Lease in effect). Interest shall begin to accrue on the first calendar day after the payment is due and it shall compound daily.

**11.11** Nothing in the foregoing Sections 11.4 through 11.10 shall apply to obligations concerning Hazardous Substances, Environmental Compliance and Remediation, which are covered in Sections 11.1 through 11.3.

**11.12** The provisions of this Section 11 shall survive the expiration or termination date of this Agreement with respect to actions or the failure to take any actions or any other matter arising prior to the expiration or termination date of this Agreement.

**12. EXPIRATION OR TERMINATION.** No later than the day prior to the expiration or earlier termination of this Consent and Use Agreement, Contractor shall, at Contractor's expense:

- (i) Remove all of Contractor's personal property and those improvements made by the Contractor which have not become the property of the City;
- (ii) Repair all injury or damages to the Vehicle Washing Facility done by, or in connection with, the installation or removal by the Contractor, of such improvements; and
- (iii) Surrender the Vehicle Washing Facility in as good condition as it was at the beginning of the Term of the Consent and Use Agreement, reasonable wear and tear expected; and
- (iv) The Contractor shall be liable for all damages to the Vehicle Washing Facility except for reasonable wear and tear.

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All property of Contractor remaining in or on the Vehicle Washing Facility after the expiration or termination of the Consent and Use Agreement shall be conclusively deemed abandoned and may be removed by the City, and the City shall have no liability whatsoever in connection therewith. The Contractor waives all requirements of the Disposition of Personal Property Landlord and Tenant Act, Florida Statute 715.10-715.111, Florida Statutes. Contractor shall reimburse the City for the cost of the removal of such personal property from the Vehicle Washing Facility.

**13. SOVEREIGN RIGHTS.** Notwithstanding anything to the contrary in this Agreement, the City shall retain all of its sovereign prerogatives and rights as a municipality under State law with respect to the use by the Contractor of the Vehicle Washing Facility. Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes. It is expressly understood that:

(a) The City retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a municipal corporation under State law and shall in no way be estopped by virtue of its execution of this Agreement from withholding or refusing to issue any approvals in its municipal regulatory capacity; and

(b) The City shall not by virtue of this Agreement or any other agreement entered into by the City relating to the Vehicle Washing Facility, be obligated in its municipal regulatory capacity to grant the Contractor any approvals under present or future laws and ordinances of whatever nature applicable to the use of the Vehicle Washing Facility; and

(c) Notwithstanding and prevailing over any contrary provision in this Agreement, any covenant or obligation of the City in its municipal regulatory capacity that may be contained in this Agreement shall not bind the City of Hialeah to grant or leave in effect any other approvals that may be granted, withheld or revoked in the discretion of the City in its municipal regulatory capacity or other applicable governmental agencies in the exercise of its police power relating to the use of the Vehicle Washing Facility.

**13.1 No Partnership or joint Venture.** Nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among any of the parties or as constituting any party as the agent or representative of any other party.

**13.2 Public Disclosure Requirements.** Throughout the term of this Agreement, all documents, records and materials of any nature relating to the use of the Vehicle Washing Facility that may be deemed public records pursuant to the Florida Public Records Laws shall be provided and retained by Contractor as required by Chapter 119, Florida Statutes. The Contractor shall be entitled to assert any lawful exemption or defense to disclosure. At the expiration of this Agreement, Contractor shall deliver all public records in its possession to the City.

**13.3 Records.** Contractor shall be solely responsible for keeping all of the records and documents necessary to demonstrate that Contractor has performed its duties in compliance with the requirements in this Agreement. The Contractor's records concerning its performance

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under this Agreement shall be kept in the Contractor's local office or in another location in Miami-Dade County for at least three (3) years following termination of this Agreement. Contractor shall cooperate with the City and provide every reasonable opportunity for the City to ascertain whether the duties of the Contractor are being performed properly. Contractor shall promptly provide any information regarding performance of Contractor's obligations under this Agreement.

#### 14. EVENTS OF DEFAULT; REMEDIES

14.1. Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

14.1.1 Monetary Default. If the Contractor fails to pay any fee or charge as required by this Agreement and the failure to pay continues for 5 days after notice from the City specifying which category of payments that have not been paid in full.

14.1.2 Bankruptcy or Insolvency. If Contractor ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any bankruptcy proceeding, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Contractor's assets or Contractor's interest in this Agreement.

14.1.3 Appointment of Receiver. The appointment of a receiver for Contractor and/or the Premises, whether voluntarily or involuntarily, with or without the consent of the City.

14.1.4 Default under or Termination of Exclusive Franchise Agreement. A Default by the Contractor in its capacity of Contractor to perform any of its material obligations under the Exclusive Franchise Agreement, or the termination thereof by the City. A Default by the Contractor under any other agreement with the City, including but not limited to any lease agreement or use agreement for any other facility, or termination thereof by the City.

14.1.5 Nonmonetary Default. If any other nonmonetary Default occurs and Contractor does not cure it within 10 days after notice from the City describing it in reasonable detail, or, in the case of a nonmonetary Default that cannot with due diligence be cured within 30 days from such notice, if Contractor shall not (1) duly commence such cure within such period and then diligently prosecute such cure to completion; and (2) complete such cure within a reasonable time under the circumstances.

14.2. Remedies. If an Event of Default occurs which is not cured by Contractor after notice, then the City may, but is not required, to issue a Termination Notice and shall have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The City's remedies include:

14.2.1 Termination of Contractor's Rights. The City may terminate Contractor's rights to use the Vehicle Washing Facility by any lawful means, in which case this Agreement and the Term thereof shall terminate, such date of termination shall be the Expiration Date, and Contractor shall have no further rights to use of the Vehicle Washing Facility.

14.2.2 Suits Before Expiration Date. The City may sue for damages or to recover any fee or charge due and owing from time to time at the City's election.

14.2.3 Receipt of Moneys. No receipt of money by the City from Contractor after termination of this Agreement, or after the giving of any notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any notice theretofore given to Contractor, or waive the City's right to enforce payment of any fee or charge payable or later falling due, it being agreed that after service of notice to terminate this Agreement or the commencement of suit or after final order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use or, at the City's election, on account of Contractor's liability.

14.2.4 No Waiver. No failure by the City to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any fee or charge due and owing during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Agreement to be performed or complied with by Contractor, and no Default, shall be modified except by a written instrument executed by the City. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

14.2.5 Damages. The City may recover from Contractor all damages the City incurs by reason of Contractor's Default, including reimbursement of the City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. The City may recover such damages at any time after Contractor's Default, including after expiration of the Term. Notwithstanding any Applicable Law to the contrary, the City need not commence separate actions to enforce Contractor's obligations for each period of Fees or charges not paid, or each period of accrual of damages for Contractor's Default, but may accelerate all amounts due under the Agreement and may bring and prosecute a single combined action for all such Fees or charges and damages.

14.2.6 Injunction of Breaches. The City may obtain a court order enjoining Contractor from continuing any Default. Contractor specifically and expressly acknowledges that damages would not constitute an adequate remedy for any nonmonetary Default.

14.3. Contractor's Late Payments; Late Charges. If Contractor fails to make any payment to the City required under this Agreement within 5 days after such payment is first due and payable,

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then in addition to any other remedies of the City, and without reducing or adversely affecting any of the City's other rights and remedies, Contractor shall pay the City within 10 days after demand, Default Interest (as the term "Default Interest" is defined in the Equipment Yard Lease in effect) on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Contractor actually makes such payment. In addition, and without limiting any other rights or remedies of the City, Contractor shall pay the City, as additional fee, an administrative charge equal to \$500 for any payment that Contractor fails to pay within 5 days after notice that such payment is delinquent. Such administrative fee is intended to compensate the City for the inconvenience and staff time incurred by the City to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Contractor under this Agreement.

14.4. Waivers; Venue. TO THE EXTENT PERMITTED BY LEGAL REQUIREMENTS, THE CITY AND CONTRACTOR IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF THE CITY AND CONTRACTOR REGARDING THE PREMISES, ENFORCEMENT OF THIS AGREEMENT, CONTRACTOR'S USE OF THE VEHICLE WASHING FACILITY, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN THE CITY AND CONTRACTOR, OR ANY ACTIONS OF THE CITY IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS AGREEMENT. THE CITY AND CONTRACTOR EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN MIAMI-DADE COUNTY, FLORIDA, FOR ANY AND ALL CLAIMS OR DISPUTES ARISING OUT OF, TO ENFORCE, CONSTRUE, OR OTHERWISE RELATING TO THIS AGREEMENT, AND ANY APPELLATE COURT FROM ANY SUCH COURTS, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT THEREON, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH COURTS. THE CITY AND CONTRACTOR EACH AGREES THAT A FINAL JUDGMENT (AFTER EXHAUSTION OF APPEALS OR EXPIRATION OF THE TIME TO APPEAL) IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAYBE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. THE CITY AND CONTRACTOR EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY SUCH COURT. CONTRACTOR AGREES NOT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY THE CITY FOR TERMINATION. THE CITY AND CONTRACTOR AGREE THAT ANY COUNTERCLAIM THAT CONTRACTOR MAY HAVE TO ANY ACTION SHALL BE FILED AS A SEPARATE ACTION. THE CITY SHALL NOT RAISE AS A DEFENSE IN CONTRACTOR'S SEPARATE ACTION THAT SUCH ACTION IS WAIVED AND/OR SHOULD HAVE BEEN BROUGHT AS A COUNTERCLAIM IN THE CONTRACTOR'S

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SEPARATE ACTION, OR RAISE ANY DEFENSE OF COLLATERAL ESTOPPEL, RES JUDICATA, CLAIMS SPLITTING, OR OTHER SIMILAR DEFENSE.

14.5. Accord and Satisfaction; Partial Payments. No payment by Contractor or receipt by the City of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by Contractor. Any endorsement or statement on any check or letter accompanying any check or payment of any fee or charge shall not be deemed an accord or satisfaction. The City may accept any such check or payment without prejudice to the City's right to recover the balance of such fee or charge or pursue any other remedy.

14.6. Miscellaneous. The City and Contractor further agree as follows with respect to any Defaults and the City's rights and remedies:

14.6.1 Survival. No termination of this Agreement shall relieve Contractor of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Agreement.

14.6.2 Multiple Suits. The City may sue to recover damages, or sum(s) equal to any installment(s) of any fee or charge payable by Contractor, from time to time at the City's election. Nothing in this Agreement requires the City to await the date when this Agreement or the Term would have expired absent an Event of Default and a resulting termination of this Agreement.

14.6.3 Receipt of Monies. No receipt of moneys by the City from Contractor after the giving a termination shall reinstate, continue, or extend the Term or affect any notice previously given to Contractor, waive the City's right to enforcement of a fee or charge payable by Contractor or thereafter falling due. After the service of any such notice, or commencement of any suit or after a final and unappealable order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment. Any sums so collected shall instead be deemed payments on account of use and occupation of the Premises or, at the City's election, to have been made on account of Contractor's liability under this Agreement.

14.6.4 No Double Recovery. In no event shall the City be entitled, directly or indirectly, to recover twice for the same element of the City's damages.

14.7 Termination for Convenience. The City may terminate this Agreement upon one-hundred twenty (120) days -notice to Contractor without cause and for the City's convenience.

**15. NOTICES.** All notices, requests, authorizations, approvals, protests, and petitions provided for herein including, but not limited to, a notice of termination of this Consent and Use Agreement, shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by telecopy or email. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt.

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For the present, the Contractor and the City designate the following as the appropriate people and places for delivering notices and other documents:

As to the City: Mayor  
City of Hialeah  
501 Palm Avenue (4<sup>th</sup> floor)  
Hialeah, FL 33010-4719  
Telephone: (305)883-5800  
Facsimile: (305)883-5992

Copy to: City Attorney  
City of Hialeah  
501 Palm Avenue (4<sup>th</sup> floor)  
Hialeah, FL 33010-4719  
Telephone: (305)883-5854  
Facsimile: (305)883-5896

Director of Public Works  
City of Hialeah  
3700 West 4<sup>th</sup> Avenue  
Hialeah, FL 33012  
Telephone: (305) 556-3800  
Facsimile: (305) 827-0811

As to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Both Parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other Party of such change.

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**16. GOVERNING LAW.** This Agreement, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Florida. Venue shall lie exclusively in Miami-Dade County, Florida.

**17. PRINCIPLES OF INTERPRETATION.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation". Every reference to any document, including this Agreement, refers to such document as modified from time to time (except, at the City's option, any modification that violates this Agreement), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

**18. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the successors and assigns of the parties.

**19. ENTIRE AGREEMENT.** This Agreement contains all terms, covenants, and conditions between the City and the Contractor about the Vehicle Washing Facility. The parties have no other understandings or agreements, oral or written, about the Vehicle Washing Facility or the Contractor's use of, or any interest of the Contractor in, the Vehicle Washing Facility.

**20. FACSIMILE, EMAIL, AND COUNTERPARTS.** A facsimile or email of this Consent Use Agreement and any signatures hereon shall be considered for all purposes as originals. This Consent Use Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement.

**21. INCORPORATION BY REFERENCE AND CONFLICT.** All references to the Exclusive Franchise Agreement is referred to the Exclusive Franchise Agreement entered into by and between the City and \_\_\_\_\_, dated \_\_\_\_\_, which Exclusive Franchise Agreement is incorporated herein by reference. In the event of any conflict between any conditions and terms of the Exclusive Franchise Agreement expressly referred to in this Consent and Use Agreement, and the terms of this Consent and Use Agreement, the applicable conditions and terms of the Exclusive Franchise Agreement shall prevail.

*[Signatures on Next Page]*

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IN WITNESS WHEREOF, the Parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

Attest:

**CITY OF HIALEAH**, by and through its  
City Council

\_\_\_\_\_  
Marbelys Fatjo, City Clerk

By: \_\_\_\_\_  
Carlos Hernandez, Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2015

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Lorena Bravo, City Attorney  
\_\_\_\_ day of \_\_\_\_\_, 2015

(CITY SEAL)

WITNESSES:

**XYZ COMPANY, INC.**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_ day of \_\_\_\_\_, 2015

ATTEST:

\_\_\_\_\_  
SECRETARY

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STATE OF FLORIDA        )  
                                  ) SS:  
CITY OF                    )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_, of XYZ Company, Inc., an organization authorized to do business in the State of Florida, and he/she executed the foregoing Agreement as the proper official of \_\_\_\_\_ for the uses and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and City aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Council Expires:

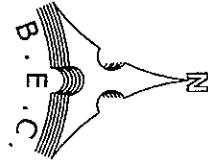
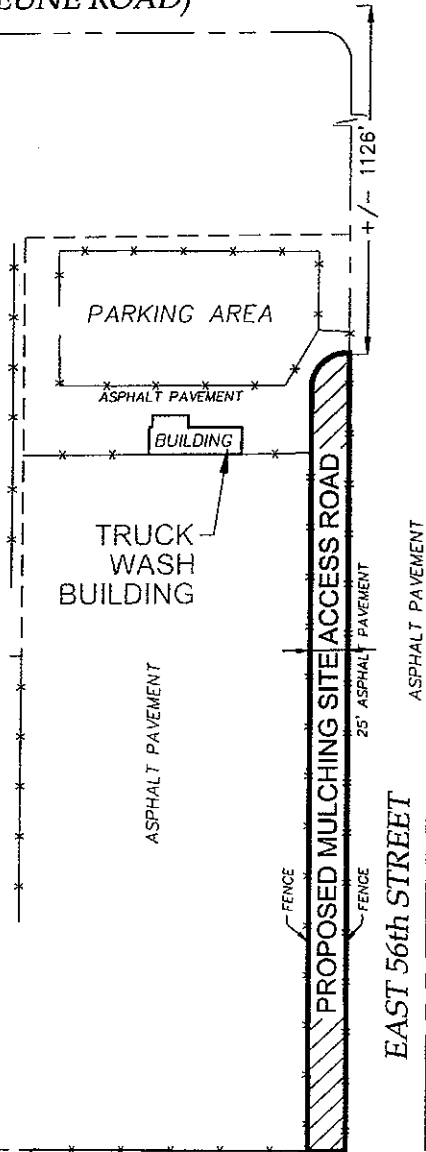
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# EXHIBIT 1

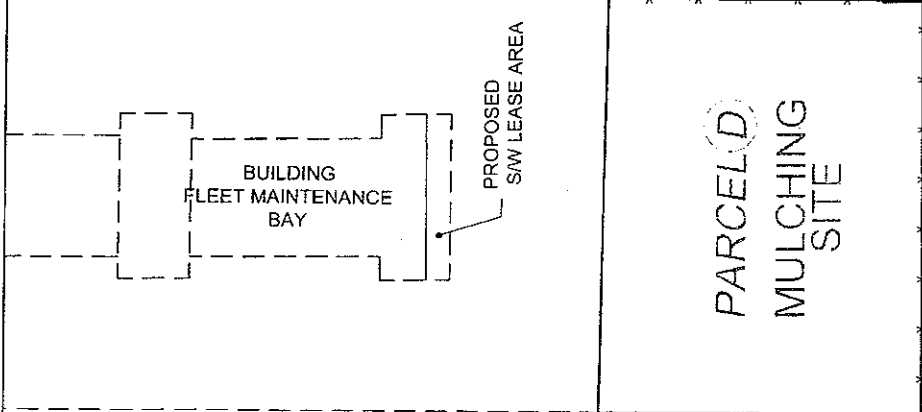
## MULCHING SITE ACCESS ROAD

EAST 8th AVENUE (LEJEUNE ROAD)

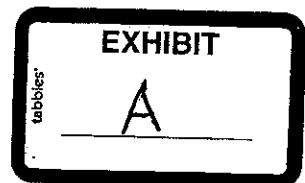


0 50' 100'  
GRAPHIC SCALE

PARCEL A



SEABOARD ALL-FLORIDA RAILROAD



## **SCHEDULE "B"**

### **SCHEDULE OF FEES AND CHARGES** **(Vehicle Washing Facility)**

The fees and charges to Contractor for use of the Vehicle Washing Facility shall be as follows:

*Base Fee for Vehicle Washing Facility.* For the first year, Contractor shall pay The City, without notice or demand, in lawful money of the United States of America, an annual fee of \$48,000.00 payable monthly in equal installments of \$4,000.00 beginning on August 1, 2015, the "Commencement Date" and each and every month thereafter on or before the first day of each month. Contractor shall pay the Base Fee when due and payable, without any setoff, abatement, deduction, counterclaim or prior demand whatsoever. Any Base Fee or Additional Fee due for any partial month, year or other applicable period in the calendar year in which the Commencement Date or Expiration Date shall fall, whichever occurs first, shall be appropriately prorated. Base Fee for the Vehicle Washing Facility shall be adjusted as follows:

*Fee Adjustments.* Beginning on the year following the Commencement Date, and each anniversary thereafter, Base Fee shall be adjusted to reflect an increase of three percent (3%) of the annual Base Fee paid the preceding year, or one hundred percent (100%) of any upward increase in the Consumer Price Index (CPI) during the most recent twelve (12) month period, whichever amount represents a higher increase to the Base Fee. The percentage CPI change shall be calculated utilizing the same formula described in Section 38.3 of the Exclusive Franchise Agreement.

**Attachment "C" to Addendum No. 4**

**City of Hialeah RFP No. 2014-15-9500-00-002**

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## **CONSENT AND USE AGREEMENT (Fueling Facility)**

**THIS CONSENT AND USE AGREEMENT** (hereinafter referred to as the "Consent and Use Agreement" or "Agreement"), by the **CITY OF HIALEAH**, whose mailing address is 501 Palm Avenue, 4<sup>th</sup> Floor, Hialeah, FL 33010, hereinafter referred to as "CITY", and **XYZ COMPANY, INC.**, whose mailing address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR", is entered into as of \_\_\_\_\_, 2015.

### **WITNESSETH:**

**WHEREAS**, the City owns the Fueling Facility located in close proximity to the City's Solid Waste Equipment Yard leased by Contractor in Hialeah, Florida (hereinafter referred to as the "Fueling Facility"), which is more particularly described and depicted in Exhibit "A" attached hereto; and

**WHEREAS**, on \_\_\_\_\_, 2015, the City Council of the City of Hialeah, passed and adopted Resolution No. \_\_\_\_\_, approving the provisions of the Exclusive Franchise Agreement entered into by and between the City and the Contractor, dated \_\_\_\_\_, 2015 (hereinafter referred to as the "Exclusive Franchise Agreement"); and

**WHEREAS**, the Exclusive Franchise Agreement provided the Contractor with an option to use the Fueling Facility to fuel the vehicles used by the Contractor to provide Residential Collection Service under the Exclusive Franchise Agreement, if the Contractor delivered timely written notice to the City that it wished to use the Fueling Facility; and

**WHEREAS**, the Contractor timely delivered notice to the City exercising its option to use the Fueling Facility to fuel the vehicles used by the Contractor to provide Residential Collection Service, subject to the terms of the Exclusive Franchise Agreement and this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the City consents to the Contractor's use of the Fueling Facility, subject to the terms and provisions of the Exclusive Franchise Agreement and upon the further terms and conditions of this Agreement.

**1. RECITAL WHEREAS CLAUSES.** The above Recital Whereas Clauses are true and correct and are hereby made an integral part of this Agreement.

**2. EXCLUSIVE FRANCHISE AGREEMENT.** All the terms and provisions of the Exclusive Franchise Agreement are incorporated in by reference in this Agreement as if fully stated herein, and are all agreed to by the Contractor as material terms included in, and as a part of, this Agreement.

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**3. EFFECTIVE DATE.** This Agreement shall be deemed effective as of the date on which the last of the parties signs this Agreement.

**4. CONSENT OF USE.** By this Agreement, the City agrees to the Contractor's use of the Fueling Facility, and the Contractor agrees to use of the Fueling Facility, subject to, and in accordance with, the terms and provisions of the Exclusive Franchise Agreement, and this Agreement.

**5. TERM.** The term of this Agreement shall commence on August 1, 2015 and the Agreement shall continue until: (a) the expiration of the Exclusive Franchise Agreement or its earlier termination by the City; (b) the expiration of the Equipment Yard Lease or its earlier termination by the City; or (c) the termination of this Agreement by the City.

**6. FEES AND OTHER CHARGES.** For its use of the Fueling Facility, the Contractor shall pay the City fees or other charges as set forth in the Schedule attached as Exhibit "B" hereto. The Contractor further agrees to pay all any of the following impositions made by any governmental authority, including the City acting in its governmental or regulatory capacity, which at any time before or during the Term and applicable to the Term or any part of it, may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Fueling Facility or the use thereof by Contractor: (a) all general and special taxes (including real estate, sales, use and the like), (b) municipal water, water meter and sewer rents, rates and charges, (c) excises, (d) levies, (e) license and permit fees, (f) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, (g) fines, penalties and other governmental charges and any interest or costs with respect thereto, and (h) any and all other levies, fees, rents, proffers, assessments or taxes and charges, general and special, ordinary and extraordinary, foresee and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto. The Contractor agrees to pay all such fees, charges and costs. The Contractor's failure to pay such fees, charges and costs shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement or other applicable provisions of this Agreement.

#### **7. USE AND REPAIR.**

7.1 The Contractor may use the Fueling Facility to fuel its vehicles that are used by the Contractor to provide Residential Collection Service under the Exclusive Franchise Agreement. The Contractor's use of the Fueling Facility shall not be exclusive, but shall be shared with the City as it requires, and deems necessary, for its use of the Fueling Facility.

7.2 The City shall have the right to establish and enforce reasonable rules and regulations ("Rules and Regulations") which it may make, from time to time, regarding the Contractor's use of the Fueling Facility to promote the safety, care, and cleanliness of the grounds where the Fueling Facility is located, as well as for the preservation of good order, and the access and egress of the Contractor's vehicles into and out of the Fueling Facility. The Contractor shall obey all such Rules

and Regulations of which it has received reasonable notice, and the failure to do so shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement, or other applicable provisions of this Agreement.

7.3 The City warrants that to the best of its knowledge the improvements on the Fueling Facility comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances including but not limited to zoning and requirements under Americans with disability Act or any similar laws ("Applicable Requirements") that were in effect at the time of the construction of the Fueling Facility or which have become in force subsequently thereto which are applicable to the Fueling Facility. The Contractor is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for the City's intended use, and acknowledges that past uses of the Fueling Facility are no guarantee, and cannot be relied on, as to the current compliance of the Fueling Facility with all Applicable Requirements. If the Applicable Requirements are hereafter changed so as to require any expenditure by the City to bring the Fueling Facility into compliance with any Applicable Requirements, then the City, at its sole discretion, may terminate this Consent and Use Agreement, whereupon the parties shall be released of all rights and obligations thereunder.

7.4 Contractor acknowledges that: (a) it has been given an opportunity to inspect the Fueling Facility, (b) it has been advised by the City to satisfy itself with respect to the condition of the Fueling Facility (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for the Contractor's intended use, (c) Contractor has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its use of the Fueling Facility, (d) it is not relying on any representation as to the condition of the Fueling Facility made by City of any one on the City's behalf and (e) neither City nor City's agents have made any oral or written representations or warranties with respect to said matters other than as set forth in this Agreement.

7.5 Except for any repairs or replacements required as a result of the acts or omissions or negligence of the Contractor, its agents and employees or invitees, and ordinary wear and tear, the City shall maintain the Fueling Facility in good condition. The City shall not be required to make any repairs, alterations or improvements of any kind in, on or about the Fueling Facility, for the benefit of Contractor. The Contractor agrees to accept and use the Fueling Facility in its "As Is" condition. In the event of any interruption of fuel, utility or service or malfunction for any reason of any equipment or fixture rendering the Fuel Facility inoperable, the City shall use reasonable diligence to restore the equipment, fixture, utility or service. However, any such interruption or malfunction, if restored within a reasonable time, shall not entitle Contractor to be relieved from any of its obligations under this Agreement, or grant Contractor the right of set-off or recoupment of Fees or Other Charges, payable pursuant to Section 6, or entitle Contractor to any damages.

The Contractor shall use reasonable care in its use of the Fueling Facility, and shall not make any repairs or alterations to the Fueling Facility, without the prior written consent of the City. Contractor shall be responsible to make all necessary repairs or replacements to the Fueling Facility

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required as a result of the acts or omissions or negligence of the Contractor, its agents and employees or invitees. If Contractor fails to make such repairs after 5 days prior written notice (except in case of an emergency, in which case no notice shall be required), The City may perform such repairs on Contractor's behalf, and Contractor shall promptly pay to the City a sum equal to 115% of the costs of such repairs. All such sums expended by the City on behalf of the Contractor in the performance of Contractor's obligation shall be deemed a "fee" and a monetary obligation of the Contractor.

**8. AMENDMENTS AND MODIFICATIONS.** This Agreement may not be amended or modified unless in writing, signed by the City and Contractor.

**9. ASSIGNMENT.** This Agreement may not be assigned or otherwise transferred by the Contractor without the prior written consent of the City. The City shall have the right to approve or deny, with or without cause, any proposed or actual assignment or transfer by the Contractor in the manner set forth in the Exclusive Franchise Agreement.

**10. INSURANCE.** The Contractor shall provide and maintain during the term of this Agreement until it expires or is terminated, policies of insurance as required by paragraph 52 of the Exclusive Franchise Agreement. Failure to do so shall constitute a material Default of this Agreement, which shall entitle the City to terminate this Agreement in the same manner provided for in Section 47 of the Exclusive Franchise Agreement.

**11. DAMAGES AND INDEMNIFICATION.** The Contractor shall be liable to, and indemnify, the City to at least the same extent as provided for in paragraph 51 of the Exclusive Franchise Agreement including, but not limited to, the following:

**HAZARDOUS SUBSTANCES; ENVIRONMENTAL COMPLIANCE,  
AND REMEDIATION**

11.1. Restrictions. Contractor shall not cause or permit to occur on, under or at the Fueling Facility during the Term: (a) any violation of any Environmental Law (as the term "Environmental Law" is defined in the Equipment Yard Lease in effect); or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance (as the term "Hazardous Substance" is defined in the Equipment Yard Lease in effect) in violation of Environmental Laws, or the transportation to or from the Fueling Facility of any Hazardous Substance in violation of Environmental Laws.

11.2. Condition of Fueling Facility; Compliance; Clean-Up. Contractor acknowledges that it is fully familiar with the physical and environmental condition of the Fueling Facility and shall take the Fueling Facility in "AS IS" and "WHERE IS" condition without any representation or warranty whatsoever except as expressly set forth in this Agreement. Contractor shall, at Contractor's sole expense: (a) comply with all applicable Environmental Laws and, to the extent any applicable Environmental Law requires, clean up any Hazardous Substance Discharge (as the term "Hazardous Substance Discharge" is defined in the Equipment Yard Lease in effect); (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government (as the term "Government" is defined in the Equipment Yard Lease in effect) under Environmental Laws; (c) if any Government requires any clean-up plan or

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clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and any required financial assurances for such Hazardous Substances Discharge; (d) promptly and diligently carry out all such clean-up plans; (e) conduct and complete the Remedial Action, and indemnify the City for any non-performance of or delay in completion of the Remedial Action, except to the extent such non-performance of or delay in completion of the Remedial Action is caused by the acts or omissions of the City or the City's agent; and (f) as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, indemnify the City against any Hazardous Substances Discharge or violation of Environmental Law provided, however, in no event shall Contractor indemnify the City for events, occurrences or matters (i) caused by the acts or omissions of the City or the City's agent, or (ii) which are in existence prior to the Commencement Date, except to the extent such events, occurrences or matters are exacerbated by Contractor (in which event Contractor shall only indemnify the City with regards to such exacerbation). Without limiting the generality of the foregoing, Contractor shall comply with any conditions of any "no further action" determination as provided for and in conformance with Rule 62-780.680, Fla. Admin. Code. Neither the City nor Contractor shall modify the terms of any such "no further action" determination without the written consent of the other party. Any party's obligations under this Section 11.2 shall not limit such party's rights against third parties. Notwithstanding anything to the contrary in this Consent and Use Agreement, as to events, occurrences, or matters first arising during the period beginning on the Commencement Date and ending on the Expiration Date, as between the City and Contractor (and those claiming through Contractor, including Sub-Contractors), The City shall have no responsibility whatsoever regarding environmental matters and conditions on the Fueling Facility. Contractor shall obtain and maintain a pollution liability policy in compliance with the requirements in Section 52.3 of the Exclusive Franchise Agreement, to insure against risks including (if available) an unknown pollution condition, third-party claims alleging that pollution has migrated from the Fueling Facility and has caused bodily injury or damaged property off-Fueling Facility, allegations of bodily injury or property damage as a result of exposure to toxic substances on the Fueling Facility, and claims by Governments for natural resource damages. Contractor shall continue to maintain a pollution liability policy for the risks and in the amounts as required by this Section 11.2 throughout the term of this Consent and Use Agreement. Both the City and Contractor shall be named insureds, though the policy will provide that only Contractor is responsible for premium payments.

11.3. Subject to the limits on liability set forth in Florida Statutes Section 768.28, as amended from time to time, the City shall indemnify the Contractor and hold the Contractor harmless from any damages that are incurred by the Contractor as a result of any pollution in violation of Applicable Law (as the term "Applicable Law" is defined in the Equipment Yard Lease in effect) that exists on, under, or adjacent to the Fueling Facility prior to the Commencement Date. However, this indemnification does not extend to pollution in violation of Applicable Law or other environmental contamination or damages caused by the Contractor or its subcontractors on or after the Commencement Date. In the event of joint negligence on the part of the City and the Contractor, all losses and costs shall be apportioned in accordance with the provision of the Exclusive Franchise Agreement.

#### DAMAGES AND INDEMNIFICATION

11.4 Liability. The Contractor and its agents shall, in the use and operation of the Fueling Facility, exercise reasonable care in all of its actions. Contractor shall not do, or knowingly permit any officer, director, employee, agent or contractor of Contractor or any other Person, to do any act or thing upon the Fueling Facility or elsewhere which may reasonably be

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likely to subject the City to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of any Applicable Law or any other law, and shall use its best efforts to exercise such control over the Fueling Facility so as to fully protect the City against any such liability.

The Contractor shall be liable for all injuries and conditions that are caused by or result from the actions or inactions of the Contractor, including but not limited to the Contractor's failure to perform in accordance with the terms of this Agreement. To the extent that the City and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 11.7 below.

11.5 Contractor's Indemnification of The City. To the greatest extent allowed by Applicable Law, the Contractor releases, covenants not sue, and shall defend, indemnify, and hold harmless, the City, the Mayor, the Council and each of its members, and each of the City's officials, officers, directors, employees, agents or representatives (collectively the "City Indemnified Parties") from and against every Indemnified Loss (as the term "Indemnified Loss" is defined in the Exclusive Franchise Agreement in effect) that is caused by or results from, directly or indirectly, in whole or in part, any act, omission, or negligence of the Contractor, any tier of subcontractor to the Contractor or any subcontractor to a subcontractor of the Contractor, or anyone employed by any of those persons for whose acts or omissions any of them may be liable, except to the extent resulting from the negligent conduct of any of the City Indemnified Parties. The obligation of the Contractor under this Section 11.5 is absolute and unconditional; it is not conditioned in any way on any attempt by any of the City Indemnified Parties to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against any of the City Indemnified Parties.

It is the intent of this Section 11.5 that the Contractor's indemnification obligations include all joint and several liability of the Contractor, any subcontractor to the Contractor, or any subcontractor to a subcontractor of the Contractor, and anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

The City may employ any attorney of its choice or may use its in-house counsel to enforce or defend the City's right to indemnity provided by this Agreement.

11.6 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the City Indemnified Parties by reason of any event for which Contractor has agreed to indemnify the City Indemnified Parties, then, upon demand by the City, Contractor shall resist or defend such claim, action or proceeding (in such City Indemnified Party's name, if necessary) by the attorneys for Contractor's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Contractor) or (in all other instances) by such attorneys as Contractor shall select and the City shall approve, which approval shall not be unreasonably withheld. The foregoing notwithstanding, and except with respect to personal injury or other

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liability claims within the coverage limits afforded by Contractor's liability insurance carrier, the City may, following such consultation with Contractor as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding. The Contractor shall advance or promptly reimburse the City any and all costs and expenses incurred by the City in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which any of the City Indemnified Parties is entitled to indemnification under this Agreement, whether or not any of the City Indemnified Parties is a party or potential party to it. The City shall consent to any proposed settlement, which such consent shall not be unreasonably withheld.

11.7 Contribution. In the event of joint negligence on the part of the City and the Contractor, any loss and costs shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the Effective Date, subject to the recovery limits set forth in Section 768.28, Florida Statutes, in effect on the Effective Date.

11.8 Damages. The measure of damages to be paid by the Contractor to the City or by the City to the Contractor, due to any failure by the Contractor or the City to meet any of its obligations under this Agreement, shall be the actual damages incurred by the City or the Contractor. Neither Party shall have any liability under this Agreement for consequential, delay, special, indirect, or punitive damages. The foregoing shall apply without regard to either Party's rights to the insurance proceeds or other factors.

If the Contractor fails to comply with any Applicable Law, the Contractor shall promptly pay to the City the following:

- (a) All lawful fines, penalties, and forfeitures charged to the City by any judicial order or by any governmental agency responsible for the enforcement of the Applicable Law; and
- (b) The actual costs incurred by the City as a result of the Contractor's failure to comply with the Applicable Law, including any costs incurred in investigating and remedying the conditions which led to or resulted from the Contractor's failure to comply with the Applicable Law.

11.9 Liability of the City; No Personal Liability. The City shall not be liable in any event whatsoever for any injury or damage to Contractor or to any other person occurring on, in or about the Fueling Facility and its appurtenances, including, without limitation, the streets or sidewalk area within the Fueling Facility, nor for any injury or damage to the Fueling Facility or to any property belonging to Contractor or to any other Person (as the term "Person" is defined in the Equipment Yard Lease in effect) which may arise from fire, breakage, use, misuse, abuse, of negligence of the Contractor or from any other cause whatsoever. The City, in its proprietary capacity, shall not be liable to Contractor or to any other Person for any failure of water supply,

gas, electric current, nor for any injury or damage to any property of Contractor or of any other Person or to the Fueling Facility caused by or resulting from gasoline, oil, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water or rain which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Fueling Facility, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the City or the Contractor.

11.10 Collection of Overdue Payments And Interest. If the Contractor fails to pay any Fee or other amount that is owed to the City under this Agreement, the Contractor shall pay interest at the legal rate established by law, on the outstanding debt and the Contractor shall pay any expenses the City incurs in its efforts to recover the unpaid debt including Legal Costs (as the term is defined in the Equipment Yard Lease in effect). Interest shall begin to accrue on the first calendar day after the payment is due and it shall compound daily.

11.11 Nothing in the foregoing Sections 11.4 through 11.10 shall apply to obligations concerning Hazardous Substances, Environmental Compliance and Remediation, which are covered in Sections 11.1 through 11.3.

11.12 The provisions of this Section 11 shall survive the expiration or termination date of this Agreement with respect to actions or the failure to take any actions or any other matter arising prior to the expiration or termination date of this Agreement.

**12. EXPIRATION OR TERMINATION.** No later than the day prior to the expiration or earlier termination of this Consent and Use Agreement, Contractor shall, at Contractor's expense:

- (i) Remove all of Contractor's personal property and those improvements made by the Contractor which have not become the property of the City;
- (ii) Repair all injury or damages to the Fueling Facility done by, or in connection with, the installation or removal by the Contractor, of such improvements; and
- (iii) Surrender the Fueling Facility in as good condition as it was at the beginning of the Term of the Consent and Use Agreement, reasonable wear and tear expected; and
- (iv) The Contractor shall be liable for all damages to the Fueling Facility except for reasonable wear and tear.

All property of Contractor remaining in or on the Fueling Facility after the expiration or termination of the Consent and Use Agreement shall be conclusively deemed abandoned and may be removed by the City, and the City shall have no liability whatsoever in

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connection therewith. The Contractor waives all requirements of the Disposition of Personal Property Landlord and Tenant Act, Florida Statute 715.10-715.111, Florida Statutes. Contractor shall reimburse the City for the cost of the removal of such personal property from the Fueling Facility.

**13. SOVEREIGN RIGHTS.** Notwithstanding anything to the contrary in this Agreement, the City shall retain all of its sovereign prerogatives and rights as a municipality under State law with respect to the use by the Contractor of the Fueling Facility. Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes. It is expressly understood that:

(a) The City retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a municipal corporation under State law and shall in no way be estopped by virtue of its execution of this Agreement from withholding or refusing to issue any approvals in its municipal regulatory capacity; and

(b) The City shall not by virtue of this Agreement or any other agreement entered into by the City relating to the Fueling Facility, be obligated in its municipal regulatory capacity to grant the Contractor any approvals under present or future laws and ordinances of whatever nature applicable to the use of the Fueling Facility; and

(c) Notwithstanding and prevailing over any contrary provision in this Agreement, any covenant or obligation of the City in its municipal regulatory capacity that may be contained in this Agreement shall not bind the City of Hialeah to grant or leave in effect any other approvals that may be granted, withheld or revoked in the discretion of the City in its municipal regulatory capacity or other applicable governmental agencies in the exercise of its police power relating to the use of the Fueling Facility.

**13.1 No Partnership or joint Venture.** Nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among any of the parties or as constituting any party as the agent or representative of any other party.

**13.2 Public Disclosure Requirements.** Throughout the term of this Agreement, all documents, records and materials of any nature relating to the use of the Fueling Facility that may be deemed public records pursuant to the Florida Public Records Laws shall be provided and retained by Contractor as required by Chapter 119, Florida Statutes. The Contractor shall be entitled to assert any lawful exemption or defense to disclosure. At the expiration of this Agreement, Contractor shall deliver all public records in its possession to the City.

**13.3 Records.** Contractor shall be solely responsible for keeping all of the records and documents necessary to demonstrate that Contractor has performed its duties in compliance with the requirements in this Agreement. The Contractor's records concerning its performance under this Agreement shall be kept in the Contractor's local office or in another location in Miami-Dade County for at least three (3) years following termination of this Agreement. Contractor shall cooperate with the City and provide every reasonable opportunity for the City to ascertain whether the duties of the Contractor are being performed properly. Contractor shall promptly provide any information regarding performance of Contractor's obligations under this



Agreement.

#### 14. EVENTS OF DEFAULT; REMEDIES

14.1. Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

14.1.1 Monetary Default. If the Contractor fails to pay any fee or charge as required by this Agreement and the failure to pay continues for 5 days after notice from the City specifying which category of payments that have not been paid in full.

14.1.2 Bankruptcy or Insolvency. If Contractor ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any bankruptcy proceeding, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Contractor's assets or Contractor's interest in this Agreement.

14.1.3 Appointment of Receiver. The appointment of a receiver for Contractor and/or the Premises, whether voluntarily or involuntarily, with or without the consent of the City.

14.1.4 Default under or Termination of Exclusive Franchise Agreement. A Default by the Contractor in its capacity of Contractor to perform any of its material obligations under the Exclusive Franchise Agreement, or the termination thereof by the City. A Default by the Contractor under any other agreement with the City, including but not limited to any lease agreement or use agreement for any other facility, or termination thereof by the City.

14.1.5 Nonmonetary Default. If any other nonmonetary Default occurs and Contractor does not cure it within 10 days after notice from the City describing it in reasonable detail, or, in the case of a nonmonetary Default that cannot with due diligence be cured within 30 days from such notice, if Contractor shall not (1) duly commence such cure within such period and then diligently prosecute such cure to completion; and (2) complete such cure within a reasonable time under the circumstances.

14.2. Remedies. If an Event of Default occurs which is not cured by Contractor after notice, then the City may, but is not required, to issue a Termination Notice and shall have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The City's remedies include:

14.2.1 Termination of Contractor's Rights. The City may terminate Contractor's rights to use the Fueling Facility by any lawful means, in which case this Agreement and the Term thereof shall terminate, such date of termination shall be the Expiration Date, and Contractor shall have no further rights to use of the Fueling Facility.

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14.2.2 Suits Before Expiration Date. The City may sue for damages or to recover any fee or charge due and owing from time to time at the City's election.

14.2.3 Receipt of Moneys. No receipt of money by the City from Contractor after termination of this Agreement, or after the giving of any notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any notice theretofore given to Contractor, or waive the City's right to enforce payment of any fee or charge payable or later falling due, it being agreed that after service of notice to terminate this Agreement or the commencement of suit or after final order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use or, at the City's election, on account of Contractor's liability.

14.2.4 No Waiver. No failure by the City to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any fee or charge due and owing during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Agreement to be performed or complied with by Contractor, and no Default, shall be modified except by a written instrument executed by the City. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

14.2.5 Damages. The City may recover from Contractor all damages the City incurs by reason of Contractor's Default, including reimbursement of the City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. The City may recover such damages at any time after Contractor's Default, including after expiration of the Term. Notwithstanding any Applicable Law to the contrary, the City need not commence separate actions to enforce Contractor's obligations for each period of Fees or charges not paid, or each period of accrual of damages for Contractor's Default, but may accelerate all amounts due under the Agreement and may bring and prosecute a single combined action for all such Fees or charges and damages.

14.2.6 Injunction of Breaches. The City may obtain a court order enjoining Contractor from continuing any Default. Contractor specifically and expressly acknowledges that damages would not constitute an adequate remedy for any nonmonetary Default.

14.3. Contractor's Late Payments; Late Charges. If Contractor fails to make any payment to the City required under this Agreement within 5 days after such payment is first due and payable, then in addition to any other remedies of the City, and without reducing or adversely affecting any of the City's other rights and remedies, Contractor shall pay the City within 10 days after demand, Default Interest (as the term "Default Interest" is defined in the Equipment Yard Lease in effect) on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Contractor actually makes such payment. In addition, and without limiting any

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other rights or remedies of the City, Contractor shall pay the City, as additional fee, an administrative charge equal to \$500 for any payment that Contractor fails to pay within 5 days after notice that such payment is delinquent. Such administrative fee is intended to compensate the City for the inconvenience and staff time incurred by the City to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Contractor under this Agreement.

14.4. Waivers; Venue. TO THE EXTENT PERMITTED BY LEGAL REQUIREMENTS, THE CITY AND CONTRACTOR IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF THE CITY AND CONTRACTOR REGARDING THE PREMISES, ENFORCEMENT OF THIS AGREEMENT, CONTRACTOR'S USE OF THE FUELING FACILITY, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN THE CITY AND CONTRACTOR, OR ANY ACTIONS OF THE CITY IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS AGREEMENT. THE CITY AND CONTRACTOR EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN MIAMI-DADE COUNTY, FLORIDA, FOR ANY AND ALL CLAIMS OR DISPUTES ARISING OUT OF, TO ENFORCE, CONSTRUCT, OR OTHERWISE RELATING TO THIS AGREEMENT, AND ANY APPELLATE COURT FROM ANY SUCH COURTS, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT THEREON, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH COURTS. THE CITY AND CONTRACTOR EACH AGREES THAT A FINAL JUDGMENT (AFTER EXHAUSTION OF APPEALS OR EXPIRATION OF THE TIME TO APPEAL) IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAYBE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. THE CITY AND CONTRACTOR EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY SUCH COURT. CONTRACTOR AGREES NOT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY THE CITY FOR TERMINATION. THE CITY AND CONTRACTOR AGREE THAT ANY COUNTERCLAIM THAT CONTRACTOR MAY HAVE TO ANY ACTION SHALL BE FILED AS A SEPARATE ACTION. THE CITY SHALL NOT RAISE AS A DEFENSE IN CONTRACTOR'S SEPARATE ACTION THAT SUCH ACTION IS WAIVED AND/OR SHOULD HAVE BEEN BROUGHT AS A COUNTERCLAIM IN THE CONTRACTOR'S SEPARATE ACTION, OR RAISE ANY DEFENSE OF COLLATERAL ESTOPPEL, RES JUDICATA, CLAIMS SPLITTING, OR OTHER SIMILAR DEFENSE.

14.5. Accord and Satisfaction; Partial Payments. No payment by Contractor or receipt by the City of a lesser amount than the amount owed under this Agreement shall be deemed to be other

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than a part payment on account by Contractor. Any endorsement or statement on any check or letter accompanying any check or payment of any fee or charge shall not be deemed an accord or satisfaction. The City may accept any such check or payment without prejudice to the City's right to recover the balance of such fee or charge or pursue any other remedy.

14.6. Miscellaneous. The City and Contractor further agree as follows with respect to any Defaults and the City's rights and remedies:

14.6.1 Survival. No termination of this Agreement shall relieve Contractor of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Agreement.

14.6.2 Multiple Suits. The City may sue to recover damages, or sum(s) equal to any installment(s) of any fee or charge payable by Contractor, from time to time at the City's election. Nothing in this Agreement requires the City to await the date when this Agreement or the Term would have expired absent an Event of Default and a resulting termination of this Agreement.

14.6.3 Receipt of Monies. No receipt of moneys by the City from Contractor after the giving a termination shall reinstate, continue, or extend the Term or affect any notice previously given to Contractor, waive the City's right to enforcement of a fee or charge payable by Contractor or thereafter falling due. After the service of any such notice, or commencement of any suit or after a final and unappealable order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment. Any sums so collected shall instead be deemed payments on account of use and occupation of the Premises or, at the City's election, to have been made on account of Contractor's liability under this Agreement.

14.6.4 No Double Recovery. In no event shall the City be entitled, directly or indirectly, to recover twice for the same element of the City's damages.

14.7 Termination for Convenience. The City may terminate this Agreement upon one-hundred twenty (120) days -notice to Contractor without cause and for the City's convenience.

**15. NOTICES.** All notices, requests, authorizations, approvals, protests, and petitions provided for herein including, but not limited to, a notice of termination of this Consent and Use Agreement, shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by telecopy or email. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt. For the present, the Contractor and the City designate the following as the appropriate people and places for delivering notices and other documents:

As to the City: Mayor  
City of Hialeah  
501 Palm Avenue (4<sup>th</sup> floor)  
Hialeah, FL 33010-4719  
Telephone: (305)883-5800  
Facsimile: (305)883-5992

Copy to: City Attorney  
City of Hialeah  
501 Palm Avenue (4<sup>th</sup> floor)  
Hialeah, FL 33010-4719  
Telephone: (305)883-5854  
Facsimile: (305)883-5896

Director of Public Works  
City of Hialeah  
3700 West 4<sup>th</sup> Avenue  
Hialeah, FL 33012  
Telephone: (305) 556-3800  
Facsimile: (305) 827-0811

As to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Both Parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other Party of such change.

**16. GOVERNING LAW.** This Agreement, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Florida. Venue shall lie exclusively in Miami-Dade County, Florida.

Initials \_\_\_\_\_

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**17. PRINCIPLES OF INTERPRETATION.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation". Every reference to any document, including this Agreement, refers to such document as modified from time to time (except, at the City's option, any modification that violates this Agreement), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

**18. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the successors and assigns of the parties.

**19. ENTIRE AGREEMENT.** This Agreement contains all terms, covenants, and conditions between the City and the Contractor about the Fueling Facility. The parties have no other understandings or agreements, oral or written, about the Fueling Facility or the Contractor's use of, or any interest of the Contractor in, the Fueling Facility.

**20. FACSIMILE, EMAIL, AND COUNTERPARTS.** A facsimile or email of this Consent Use Agreement and any signatures hereon shall be considered for all purposes as originals. This Consent Use Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement.

**21. INCORPORATION BY REFERENCE AND CONFLICT.** All references to the Exclusive Franchise Agreement is referred to the Exclusive Franchise Agreement entered into by and between the City and \_\_\_\_\_, dated \_\_\_\_\_, which Exclusive Franchise Agreement is incorporated herein by reference. In the event of any conflict between any conditions and terms of the Exclusive Franchise Agreement expressly referred to in this Consent and Use Agreement, and the terms of this Consent and Use Agreement, the applicable conditions and terms of the Exclusive Franchise Agreement shall prevail.

*[Signatures on Next Page]*

Initials \_\_\_\_\_

Initials \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

Attest:

**CITY OF HIALEAH**, by and through its  
City Council

\_\_\_\_\_  
Marbelys Fatjo, City Clerk

By: \_\_\_\_\_  
Carlos Hernandez, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2015

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Lorena Bravo, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 2015

(CITY SEAL)

WITNESSES:

**XYZ COMPANY, INC.**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_ day of \_\_\_\_\_, 2015

ATTEST:

\_\_\_\_\_  
SECRETARY

Initials \_\_\_\_\_

Initials \_\_\_\_\_

STATE OF FLORIDA       )  
                                  ) SS:  
CITY OF                    )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_, of XYZ Company, Inc., an organization authorized to do business in the State of Florida, and he/she executed the foregoing Agreement as the proper official of \_\_\_\_\_ for the uses and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and City aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Council Expires:

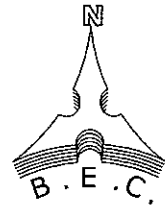
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# EXHIBIT 7

FUEL STATION



0 50' 100'  
GRAPHIC SCALE

- Ⓔ - GAS PUMP
- Ⓕ - DIESEL PUMP

PARCEL C

EAST 8th AVENUE (LEJEUNE ROAD)

+/- 1024'

+/- 494'

GRASS AREA

ELECTRICAL PANEL WITH  
EMERGENCY SHUT-OFF  
SWITCH

WATER SPOUT

VACUUM

PARCEL J  
SOLID WASTE  
PARKING

CONCRETE

CANOPY

GUARDHOUSE

FUEL  
STATIONS

EAST 55th STREET

EXHIBIT

A

tabbles

## **SCHEDULE "B"**

### **SCHEDULE OF FEES AND CHARGES**

#### **(Fueling Facility)**

The fees and charges to Contractor for use of the Fueling Facility shall be as follows:

*Base Fee for Fueling Facility.* For the first year, Contractor shall pay the City, in lawful money of the United States of America, the average monthly retail cost of fuel paid by the City to its fuel supplier, plus tax, plus an administrative fee of thirty-five cents (\$0.35), for each gallon consumed by Contractor. The Base Fee shall be, payable monthly in arrears no later than seven (7) days from the date the invoice is delivered to Contractor by the City each month. The invoice shall show the total monthly amount due and payable by Contractor to City for the Contractor's prior month's consumption and itemize the dates for which consumption is billed, the average monthly cost of fuel, the total gallons consumed by Contractor, total taxes and total fee. Contractor shall pay the Base Fee when due and payable, without any setoff, abatement, deduction, or counterclaim. Any Base Fee or Additional Fee due for any partial month, year or other applicable period in the calendar year in which the Commencement Date or Expiration Date fall, shall be appropriately prorated. Base Fee for the Fueling Facility shall be adjusted as follows:

*Fee Adjustments.* Beginning on the year following the Commencement Date, and each anniversary thereafter, Base Fee shall be adjusted to reflect an increase of 3 percent (3%) of administrative fee paid the preceding year, or one hundred percent (100%) of any upward increase in the Consumer Price Index (CPI) during the most recent twelve (12) month period, whichever amount represents a higher increase to the Base Fee. The percentage CPI change shall be calculated utilizing the same formula described in Section 38.3 of the Exclusive Franchise Agreement.